

MHTH080009432016



Order below Exh.96 in R.C.S. No.531/2016

Plaintiffs have filed this application for recalling their witness i.e. Mahendra Vasant Patil (P.W.2) for re-examination.

2. Read the application and affidavit given by Mahendra Patil (P.W.2) in support of it. Perused say given by defendant No.1 to 3, 5 to 7, 9 and defendant No.4.

3. Heard advocate of both sides. Perused entire record.

4. It is submitted on behalf of plaintiffs that, they have filed this suit against defendants for partition of the suit property and cancellation of partition deed dated 09/07/2015 and other reliefs. Defendants have appeared and contested this suit by filling their W.S. Accordingly, this court framed issued vide Exh.40. The plaintiffs have examined witness Mahendra (P.W.2) as per Exh.88 and defendants have concluded their cross examination.

5. It is further submitted on behalf of plaintiffs that during the cross examination of the Mahendra (P.W.2) certain questions put to him and also he asked whether he can produce the documents pertaining to the medical treatment of plaintiff No.1 and the complaints lodged by plaintiff No.1 and 2 against defendants to the Commissioner of Police Thane. It is submitted that they have filed those documents before this

court as per list as per Exh.99. The plaintiffs want to re-examine Mahendra (P.W.2) on the documents filed by them as per list Exh.99. Therefore, by way of this application it is prayed by the plaintiffs that they may be permitted to re-examine Mahendra (P.W.2) and for that purpose he be re-called.

6. The defendant No.4 in his reply give no objection to allow this application. It appears that in support of case of the plaintiff.

7. On the other hand defendant No.1 to 3, 5 to 7 and 9 have strongly objected to allow this application. They submitted that the plaintiffs have not pleaded regarding the documents filed at Exh.99. They also contended that the parties are not permitted to travel beyond their pleadings. They also stated that they never asked Mahendra (P.W.2) to produce those documents on record. It is also stated that by producing those documents, plaintiffs are introducing a new case which is not permissible by law. Lastly, these defendants prayed that, this application is not maintainable by law and prayed for rejection of this application.

8. There is no dispute regarding the relationship between the parties. The plaintiffs have claimed that the defendants have obtained signature of plaintiff No.1 on the partition deed dated 09/07/2015 by way of fraud and therefore, they are seeking cancellation of partition deed. Mahendra (P.W.2) is the son of plaintiff No.1. The plaintiffs want to bring on record the documents consisting of treatment taken by Vasant Patil i.e. P.W.1 in Chatrapati Shivaji Maharaj Hospital, Kalwa, Thane for the period from 27/07/2015 onwards and the police complaints lodged by him on 13/06/2021. Moreover, complaints lodged by Mahendra (P.W.2) against defendants before Commissioner of Police Thane on 27/10/2021 and 28/04/2022.

9. It is seen from the cross examination of Mahendra (P.W.2) that his father Vasant i.e. plaintiff No.1 did not make any complaint before police immediately after signing partition deed on 09/07/2015. Accordingly to the plaintiffs his signature was obtained under threat. This witness has stated that his father was taken treatment thereafter, i.e. from July 2015 onwards. This witness was never asked by defendants to produced on record the relevant medical paper and police complaints filed by them. It is pertinent to note that in the plaint filed by the plaintiff there is no where mentioned that the plaintiff No.1 was taking treatment at the hospital at Kalwa. Moreover, there is no mentioned regarding the complaints lodged by plaintiff No.1 Vasant and Mahendra (P.W.2 before Commissioner of Police, Thane.

10. It is pertinent to note that Mahendra (P.W.2) has already filed his evidence affidavit on 28/04/2026. His cross examination was concluded on 16/06/2026. The plaintiffs were in possession of those documents since the filling of this suit. They were aware regarding those documents. However, they have not pleaded regarding the documents in the plaint itself. They also did not mentioned the same in the evidence affidavit of their witnesses.

11. As per the Indian Evidence Act, the parties can re-examined his witness only for limited purpose in order to remove the ambiguity in the evidence adduced by the parties. In the case in hand, there is no ambiguity in the evidence adduced by the Mahendra (P.W.2). If plaintiffs wants to prove the documents in question they can examined independent witness. The plaintiffs could have filed those documents at the stage of filling their documents. Moreover, the specific pleading regarding the same was also necessary. It appears that by moving this application, plaintiffs

are intending to fill up lacuna in their case which is not permissible by law.

12. In view of discussion made above in my view the ingredients of provisions of re-examination are not satisfied in the present application. Therefore, plaintiffs can not be allowed to re-examine Mahendra (P.W.2). The application is devoid of merits and deserves to be rejected. Hence, following order is passed.

i)	Applications (Exh.96) is hereby rejected.
ii)	No order as to costs.

Place : Kalyan
Date : 07/07/2026

(N. K. Joshi)
2nd Joint Civil Judge
Senior Division, Kalyan