

ORDER BELOW EXH. 93 IN R.C.S. 58/2012

Present application has filed by the plaintiff for permitting him to record his further examination-in-chief for the purpose of exhibiting the documents filed by him, in support of his claim, on record.

02] The learned Advocate for the plaintiff submitted that the the plaintiff has instituted the present suit seeking reliefs of declaration and perpetual injunction. At the time of instituting the present suit the plaintiff has filed 7/12 extract of the land out of Gat Nos. 944, 1057 and 791. The plaintiff has also placed on record the mutation extracts pertaining to entries Nos. 832, 833 and 834. The plaintiff has also filed 20 Rs. stamp in respect of contract between plaintiff Nos. 01, 1A and 1B and defendants No. 01 to 03. These documents forms the basis of plaintiff's case. In the present case some of document have been exhibited, while certain documents remain unexhibited. It is further submitted that when the matter has posted for plaintiff's evidence, the further examination-in-chief of the plaintiff could not be recorded. Therefore, it is prayed that plaintiff be permitted to examine himself for the purpose of exhibiting the remaining documents. Hence, prayed to allow present application.

03] The Learned Advocate for defendants No. 01 and 02

has submitted that they have no objection for allowing the present application. Per contra, the Learned Advocate for the defendant No.03 has strongly resisted the present application.

04] The Learned Advocate for the defendant No.03 urged that plaintiff has filed present application without mentioning the provision under which it is filed. It is further submitted that the present suit has been pending since long recording further examination-in-chief of the plaintiff. Despite giving sufficient opportunities to the plaintiff, he has not completed his further examination-in-chief. Thereafter, the present suit has proceeded without the cross-examination of the plaintiff against the defendants No.01 and 02. Pursuant thereto the defendant Nos. 01 and 02 have filed an application for setting aside the no cross-examination order passed against them.

05] It is further submitted that the present application is filed by the plaintiff only with a view to fill the lacuna in his case, which is impermissible under the law. It is further submitted that at this stage the plaintiff cannot be permitted to fill such lacuna through the present application. If the plaintiff intends to exhibit the documents he is required to follow the proper procedure described by the law. However, without adopting the proper procedure, plaintiff cannot be permitted to exhibit the documents filed

by him. Hence, prayed for rejection of present application.

06] Perused the application, say and other material on record. Heard the Learned Advocates for both sides and considered their submissions.

07] It is noteworthy to mention here that a case is projected by the plaintiff shall be based on introduction of fact through plaint averments, supported by oral and documentary evidence. It can be controverted only through cross-examination and the veracity of the evidence can be tested by the other side. The plaintiff being *dominus litis* spearheads the litigation. Onus is more on the plaintiff to prove his case, unless the burden is shifted to the opposite side. In that process the plaintiff must be ready and prepared and show that he is always available and willing to complete the evidence.

08] The plaintiff in the present case has shown his readiness to complete his evidence by way of recording further examination-in-chief for the purpose of exhibiting the documents which remain unexhibited due to non-recording his further examination-in-chief. Furthermore, the plaintiff also shown his readiness for confronting to the cross-examination taken by the defendants. Record further shows the defendants No.01 and 02 have set aside the no cross-examination order passed against them only to avail

the opportunity to put forth their defence on record by way of cross-examining the plaintiff. The record also shows that the cross-examination of the plaintiff by the defendant No.03 has also not conducted. Therefore, the defendants No.01 to 03 must have opportunity to cross-examine the plaintiff so as to use the evidence so tendered in the proceeding.

09] In any suit, subject to exceptions, plaintiff being the dominus litis is bound to prove his case. Particularly in a suit for injunction, material evidence major portion of which, in all probabilities fall within the personal knowledge of the plaintiff. Hence, plaintiff plays a predominant role in a suit/ litigation. The evidence of the plaintiff as such is very crucial, therefore, such evidence shall be complete and it becomes complete. From careful perusal of the record it demonstrate that the further examination-in-chief of the plaintiff has not conducted. Therefore, some documents filed by the plaintiff in support of his claim remain unexhibited.

10] It is evident from the record that the documents sought to be exhibited were already filed on record with the plaint and form part of the suit record. The plaintiff is seeking permission only to exhibit the said documents which were remain unexhibited and he is not attempting to introduce any new documents or evidence. Mere calling

plaintiff for taking his further examination-in-chief in respect of exhibiting documents already on record cannot be termed as filling up lacuna particularly, when the documents were part of the pleadings from the inception.

11] It is settled law that procedural laws are handmade of justice and a party should not be denied an opportunity to properly prove his documents already on record. If the plaintiff is called for the purpose of recording his further examination-in-chief, for exhibiting documents, then no serious prejudice will be caused to the defendant No.03. The defendants have opportunity to cross-examine the plaintiff. Moreover, they get their cross-examination complete. Hence, the present application is deserves to be allowed. Consequently, I pass the following order:-

:- ORDER :-

- 1] The present application is hereby allowed.
- 2] The plaintiff is permitted to lead his further examination-in-chief.
- 3] Defendants shall be at liberty to cross-examine the plaintiff in accordance with law.

(Dictated and Pronounced in Open Court.)

Date:- 03/02/2026.
Place:- Jamkhed.

Sd/-
(Anushri B. Phand)
Jt. Civil Judge Junior Division,
Jamkhed.