



RCS No. 22/2026  
Ramchandra Gavande  
Vs. Kusumtai Janrao  
MHAK060005052026

**ORDER**  
**(Below Exh. 19)**  
**(Passed on 23<sup>rd</sup> March, 2026)**

This is an application by defendants to frame preliminary issue on maintainability of the suit.

2. It is submitted by defendants that the claim of the plaintiff is susceptible to monetary evaluation. Therefore, the plaintiff cannot seek mere declaration. He needs to pay Court fee according to law on the sums mentioned in the plaint. However, the plaintiff has claimed declaration in regard to specific amount under the garb of injunction over the property located at Akot bearing Plot No. 32/1/7 out of Survey No. 521/1 ad-measuring 55.09 Sq. Meters which is a constructed house property.

3. It is further submitted that plaintiff's right to claim succession is already decided by Hon'ble Civil Judge (Sr.Dn), Akot in MJC No. 6/2022 on 05/01/2026, declaring that the only defendants are legally entitled to succeed to the fix deposited amounts with various banks in the name of deceased Vishwasrao Baliram Gawande. Therefore, the suit on the same ground is not maintainable. Hence, it is

prayed that preliminary issue with regard to maintainability of the suit be framed.

4. Per contra, Ld. Advocate for the plaintiff filed Say overleaf the application stating that the suit is filed for declaration and necessary Court fee is paid. Hence, it is prayed to reject the application.

5. Heard both the sides. Perused the application, Say and documents on record. Considered the submissions.

6. Record reveals that the plaintiff is allegedly nephew of deceased Vishwasrao Baliram Gawande.

7. According to plaintiff, his father and deceased Vishwasrao were paternal cousins and he looked after deceased Vishwasrao Baliram Gawande and his wife Ratnaprabha Vishwasrao Gawande in their old age till their death. The plaintiff has performed their all last rites as well. The defendants attended the last rites of Vishwasrao and had agreed to divide his self-acquired property in four shares.

8. It is further averred in the plaint that deceased Vishwasrao had assigned the plaintiff as his nominee to his fixed deposit amounts. Therefore, the plaintiff is entitled to inherit the amounts. Hence, the plaintiff has filed suit for

declaration that he is entitled to such fixed deposit amounts.

9. Record shows that the defendant has filed certified copy of judgment of MCA No. 6/2022 whereby the Hon'ble Civil Judge (Sr.Dn), Akot has allowed the application and directed to issue Succession Certificate in favour of the defendants. The judgment reveals that present plaintiff Ramchandra Harishchandra Gawande had appeared in that application and filed his objection at Exh.14. The Hon'ble Civil Judge (Sr.Dn), Akot by the judgment and order dated 05.01.2026 dismissed the objection and allowed the application of the defendants.

10. Here in this suit, the plaintiff has again raised objection that only the defendants are not entitled to inherit the amounts of fixed deposits of deceased Vishwasrao Baliram Gawande. Therefore, a substantive question arises whether the suit is maintainable or not. However, Order XIV Rule 2 of CPC provides that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Sub-rule (2) of Rule 2 of Order XIV of CPC provides that where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a)

the jurisdiction of the Court or (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

11. Here in this case, according to defendants, present suit is barred by law because the issue involved in the suit is already decided by Hon'ble Civil Judge (Sr.Dn), Akot by the judgment and order dated 05.01.2026 passed in MCA No. 6/2022. Therefore, in my opinion, in the present suit as sub-rule (2) of Rule 2 of Order XIV of CPC, preliminary issue with regard to maintainability of the suit needs to be framed and till then it is necessary to postpone the settlement of other issues. Hence, I pass the following order ;

### **ORDER**

1. The application (Exh.19) is allowed.
2. Preliminary issue as to '*whether the suit is maintainable*' be framed.
3. Parties to lead their respective evidence in regard to the preliminary issue.

**Sd/-**

Date : 23.03.2026

(A. A. Mali)

Place : Akot.

2<sup>nd</sup> Jt Civil Judge (Jr.Dn),  
Akot, Dist. Akola.

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Order/Exh. 19**

**CERTIFICATE**

I affirm that the contents of this PD.F file Order are same word to word as per the original order.

Name of Stenographer	:	P. N. DURATKAR
Court Name	:	2 <sup>nd</sup> Jt Civil Judge (Jr.Dn.) & JMFC, Akot, Tq. Akot, Dist. Akola
Date of decision	:	23/03/2026.
Order Signed by P.O on	:	23/03/2026.
Order Uploaded on	:	24/03/2026.