

MHKO050012112010 	Mohan Dharma Kamble Vs. Parisa Narsappa Ligade RCS No. 225/2010
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ORDER BELOW EXH.123

The present application has been made by the plaintiff praying to call defendant no.8 as his witness. Defendant no.2 filed his say at Exh.124 and opposed the application.

2. Perused the application and say filed to it. Heard Ld. Advocates for both the parties.

3. Ld. Advocate for the plaintiff submitted that the present suit has been instituted for recovery of possession and perpetual injunction. He further submitted that the plaintiff became owner of the suit property by registered sale deed which was transferred to him by one Issaq Fakir and accordingly plaintiffs name mutated on 7/12 extract of the suit property. Issaq Fakir is defendant no.8 in the present suit. Suit summons duly served on him, however he failed to appear before the Court and suit proceeded ex-parte against him. Ld. Advocate for the plaintiff submitted that to prove certain facts which are necessary to establish his case as well as facts as to the creation of interest of the plaintiff in the suit property, evidence of the defendant no.8 on oath is necessary. Hence, prayed that the defendant no.8 be summoned as his witness.

4. Ld. Advocate for defendant no.2 strongly opposed the application and submitted that there is no provision in the Code of

Civil Procedure to summon the defendant as plaintiffs witness. He further submitted that the proposed witness i.e., the defendant no.8 was not listed in the witness list of the plaintiff. Therefore, this application is not tenable and prayed that the application be rejected with cost.

5. Through the present application the plaintiff prayed to summon the defendant no.8 as his witness. To support his claim Ld. Advocate for plaintiff relied on the judgment of Hon'ble High Court Mysore in **Syed Yasin Vs. Syed Shaha Mohd. Hussain [AIR 1967 Mys 37]**, wherein it was held, "*that one party to the suit can examine the other party as his witness or require him to produce documents.*" This view has been supported by Madras, Andhra Pradesh and Kerala High Court and accordingly introduced amendments in their procedural law. Applying the ratio of this judgment, one may say that the plaintiff in the present suit may examine defendant as his witness. However, it is imperative to note the view of Hon'ble Bombay High Court i.e., Parent Court on this moot point, which is somewhat different.

6. The Hon'ble Bombay High Court in **Pirgonda Hongonda Vs. Vishwanath Ganesh [AIR 1956 Bom 251, 1955 SCC OnLine Bom.151]** relying on the Circular No.161 in Civil Manual as well as observations of the Privy Council in **Kishori Lal Vs. Chunni Lal [31 All 116, at Pg.122 (PC) (A)]** held that "*normally a party to the suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness-box it would be open to the trial Court to draw an inference against him. If a party fails to appear in the witness box, it should normally not be open to his*

opponent to compel his presence by the issue of a witness summons.” This judgment is further followed in and relied by the Hon’ble Bombay High Court in **Sumeet Ganpat Bachewar Vs. Ramesh Vallabh Patel & Ors [2021 SCC OnLine Bom 5886]**.

7. It is a settled principle of law that in the event of contrary views of two High Courts, the view of Parent High Court shall be binding on the trial Court. Therefore, following the above guiding precedent of Hon’ble Bombay Court, I am of the view that the defendant no.8 who does not even appear before the Court after due service of summons, cannot be compelled to appear before the Court and depose on oath for plaintiff. The Court may draw adverse inference against such defendant. Hence, the following order;

ORDER

1. The application at Exh.123 stands rejected.
2. No order as to costs.

Sd/-

Date: 02/07/2025.
Place: Ichalkaranji.

(M.S. Gawade)
5th Jt. Civil Judge Junior Division,
Ichalkaranji.