

MHKO100006132013



Order passed below Exh 151 in R.C.S.No.190/2013

This is an application filed by defendant no.1 to 3 to call plaintiff no 1 as witness. They stated that the evidence for defendant no-1 to 3 has commenced and the evidence of Witness No.1 has been recorded. Regarding suit property, the original agreements dated 05/03/1969, 07/03/1969, and 04/09/1969, executed between the predecessors of the plaintiffs and defendants, were in the possession of defendant No.1's father. However, after the father's death, these documents came into the possession of defendant No.1. Accordingly, those original documents have been produced on behalf of defendant Nos.1 to 3 along with Exhibit No.42. It is extremely just and necessary to prove these documents. Furthermore, these documents will facilitate the administration of justice.

2. The said agreements are very old, and the witnesses, as well as the person who drafted them, have passed away. However, the plaintiff no.1 was present when the agreements were executed, and his signature are on those agreements. Therefore, to legally prove the original agreements executed on 05/03/1969, 07/03/1969 and 04/09/1969, it is extremely necessary and just to take the testimony of the plaintiff no.1 as a witness of these agreements. So prayed for issue of witness summons to the plaintiff no.1.

3. Defendant No.4 to 8 A to 8D and defendant no 9 to 12 filed their say on the same application and denied the contents of the application. Said application is not maintainable as per law and the facts. Plaintiff is already examined and defendant no.1 to 3 cross examined him. During cross examination he has to ask the questions regarding agreements. To fill the gap defendants claiming witness summons to the plaintiff. The application is not as per the provisions of the law. So prayed for rejection of the application.

4. Heard all the advocates. They argued as per contents of their application and say. Perused record.

5. Defendant no.1 to 3 cross examined plaintiff no.1 during the evidence of the plaintiff. At that time he not asked questions to the plaintiff regarding these agreements. Defendant no.1to 3 filled application at exh.101 to recall the plaintiff no.1 for cross examination. That application was rejected on merit. Defendant no.1 to 3 again filed this application to call plaintiff no 1 as his witness.

6. Here I want to rely on Mohammad Abdul Wahid v/s Nilofar 2023 INSC 1075 the judgment of Honb'le High Court, Bombay (Nagpur Bench) in writ petition no.7717/2019 and 6931/2019 was in question. After discussing various provisions of Code of Civil Procedure ,1908 and Indian Evidence Act, 1872 Honb'le Apex court held that provisions of Civil Procedure Code and Indian Evidence Act do not differentiate between a party to the suit acting as a witness and a witness otherwise called by such a party to testify. The term witness does not exclude the party to the suit i.e. , the Plaintiff or the Defendant, themselves appearing before the court to enter evidence. So there is no difference between a party to a suit as a witness and a witness simpliciter.

7. The suit is filed for partition. As per section 120 of Indian Evidence Act parties to Civil Suit shall be competent witnesses. As per Order 16 rule 1 (2) of Code Of Civil Procedure plaintiff no 1 can be examined as witness by defendant no.1 to 3 . Order 16 rule 21 of Code Of Civil Procedure states that where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

8. The alleged agreements are very much necessary to decide the suit on merit. So on the basis of ratio of above citation Mohammad Abdul Wahid I am of the opinion that plaintiff no 1 be called as witness by defendant no 1 to 3.

9. As these agreements are necessary to decide the rights of the parties in suit property, it is necessary to call plaintiff no 1 to prove these agreements. Defendant no.1 to 3 failed to cross examine plaintiff no 1 on these agreements, so it is necessary to impose cost on the defendant no.1 to 3 while allowing this application. Plaintiff no 1 is present before the court , so it is not necessary to issue witness summons to him. Hence I pass following order.

ORDER

1. Application is allowed subject to cost of Rs. 4000/- (Four Thousand Rs.only).
2. Defendant no 1 to 3 to pay cost of Rs.2000/- (Two Thousand Rs.only) to defendant no.4 to 8A to 8D and Rs. 2000/- to defendant no.9 to 12 , today only.

3. Defendant no 1 to 3 permitted to examine plaintiff no 1 as their witness.

Date : 18/03/2026

Place : Gadhinglaj

D. M. Pawar
2nd Jt. Civil Judge Jr. Dn.,
Gadhinglaj