

R. C. S. No. 18/2015.
Balku Vs. Dhondiba & Ors.
MHKO150000912015.

ORDER BELOW EXH- 94.

Defendants have filed this application U/Sec.151 of C. P. Code for setting aside evidence close order passed against them dtd. 13.01.2026. It is contention of defendants that, on previous date of hearing they were expected to lead evidence. However, their schedule witness defendant no.3 unwell to attend the court. Therefore, they have filed adjournment application. Their application have been rejected and no evidence order was passed against them. They have not causing delay intentionally to prolong case. For deciding suit on merit, they prayed to allow their application.

2. Plaintiff filed say overleaf of application and strongly opposed. He contended that, defendants intentionally to prolong case not filed evidence of their witness on record. More than sufficient opportunities granted to them. Hence, prayed to reject the same.

3. Heard. It is settle principal of natural justice to every party grant sufficient opportunity to contest suit. Further, Hon'ble Apex Court in ***G. Ratan Raj Vs. Mutthukumar Swami Permanent Fund (Ltd.)***¹ observed that, if there is bonafide reason for non appearance like illness or other, the court should lean towards allowing the party to contest the case on merit rather than passing a default orders.

4. Herein as per record, seen 02.09.2025 defendants have granted an opportunity to adduce evidence. However, they failed and finally

¹ AIR online 2019 SC 2571.

on 13.01.2026, no evidence order was passed against them. Further, these defendants on next date of order filed this application. It shows that, they have just silently observed the court proceedings and after passing adverse order against them take further actions. They have not filed single application on earlier dates of proceeding. The conduct of defendants rightly pointed by plaintiff.

5. This is suit for declaration, possession and mandatory injunction. Valuable property rights of these defendants involved in it. Further, this suit is old one and recently completed its 10 years. The overall progress of suit affected by both parties by taking adjournments. The contention of defendants not supported by document. Therefore, considering the age of proceeding along with conduct of defendants before granting opportunity some cost need to be impose over them for delay. No prejudice would be caused to the plaintiffs, if this application allowed. Hence, in the interest of justice, I pass following order,

ORDER

1. Applications stand allowed, subject to cost of Rs.500/- paid to the Legal Aid, Ajara by defendants on or before next date.
2. After payment of cost amount, evidence close order dtd. 13.01.2026 would be set aside and affidavit of witness filed with this application be accepted on record.

(R. P. Thore)

J.O.Code No.MH02897
Civil Judge, Junior Division,
Ajara.

Place- Ajara.
Date- 30.04.2026.