

ORDER BELOW EXH. NO.143 IN Spl. C. S. NO.18/2023
(Old Spl. C. S. No.66/2017)
(Subhash Bhosale Vs. Kalpana Gavkare and others.)
(Passed on this 23rd February, 2026.)
CNRNO.MHLA170009272023

The plaintiff has filed application under Order XVIII Rule 17 and alternatively under Order XII Rule 6 of the Code of Civil Procedure. The plaintiff submits that, he has filed suit against defendants for execution of sale deed according to the agreement to sell dated 03/10/2007 of 8 Acre 19 Gunthas land situated in survey No. 223 at Killari, Tq. Ausa. The said agreement to sell and receipt is filed at Sr. Nos. 1 and 2 with list Exh. 4.

The plaintiff has examined himself. However, inadvertently the agreement to sell and receipt are not exhibited. The plaintiff does not want to fill up the lacuna by again examining himself before the Court. Therefore, it is necessary to call the plaintiff as per Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure.

Defendants have admitted the agreement to sell and receipt in para No. 5 of the written statement. Therefore, according to Section 58 of the Indian Evidence Act, the admitted document shall be exhibited. Therefore, the Court has discretion to exhibit the document of agreement to sell and receipt. It is alternatively prayed that, the agreement to sell exhibited under Provision 17, 58, 91 and 92 of the Indian Evidence Act. Hence, the plaintiff prayed to allow his application.

2. Perused the say (Exh.146) of defendant No.3. She has objected the application on the grounds that, already evidence of

plaintiff and witnesses on behalf of plaintiff is completed. The plaintiff has examined witness of the agreement to sell and receipt. The said witness has denied the agreement to sell. Therefore, the plaintiff is trying to prove the said agreement to sell through the Court.

Already, the evidence of plaintiff is recorded long back. Their are names of other witnesses on the said agreement to sell. Still, the plaintiff wants to examine himself for filling up the lacuna in the evidence. Defendants have received their share in the property from the Revenue Department as the partition. Accordingly, their shares are taken on record by the Revenue Department. The agreement to sell is the private document. Therefore, it shall be proved by independent witness. Hence, defendant No. 3 prayed to reject the application.

3. Heard learned counsels for both the parties. Perused the record. The plaintiff has examined himself at Exh. 18 and another witnesses long back. The suit is too old. Moreover, according to Order XVIII Rule 17 of the Code of Civil Procedure, Court may recall and examine witness at any stage of the suit who has been examined and put such questions to him as the Court thinks fit. The power can be exercised by the Court *Suo moto* as also at the invitation of either party. The power of Court to recall a witness is discretionary and the Court is not bound to recall the witness whom the petitioner wanted to call. The discretion is to be exercised with great care and for the purposes of clarifying ambiguities and not for filling up the lacuna in the case of a party. Where due to oversight, by the advocate, certain documents though already on record were not exhibited, number,

same can be allowed to be proved by re-summing the witnesses. A witness examined on the side of the plaintiff can be examined on the side of defendant with the leave of Court. Cross-examination without such leave is not permitted.

4. In the present suit the affidavits of examination in chief of witnesses of plaintiff and plaintiff are not pressed. Therefore, their evidence cannot be considered in the present suit. Now, there is only remedy left to the plaintiff to recall the witness as per provisions under Order XVIII Rule 17 of the Code of Civil Procedure though, it is the discretion of the Court. There is nothing on record as such to be considered as evidence on behalf of the plaintiff as affidavits of examination in chief of the plaintiff and witnesses are not pressed by the plaintiff. Considering the matter to be too old, the plaintiff is directed to file his affidavit of examination in chief and affidavit of examination in chief of witnesses at the earliest. Considering the procedure of the Court utilized by the plaintiff for examining previous witnesses and time consumed by the plaintiff, the application is liable to be allowed imposing cost upon the plaintiff. Therefore, I pass following order:-

ORDER

1. The application is allowed subject to cost of Rs. 5,000/-.
2. Cost amount be handed over to defendant Nos. 1 to 3.
3. The plaintiff shall examine himself and witness at the earliest.

Date : 23.02.2026.
Place : AUSA.

(P. I. Mokashi)
Civil Judge Senior Division,
AUSA.