

RCS No. 73/2023
Yadaorao -VS- Manohar

ORDER BELOW EXH.58
(Passed on 07/08/2025)

This application is filed by the plaintiff for issuance of witness summons to defendant no.2. Defendant no.1 filed say overleaf to the application.

2. Heard Adv. Shri. Gajwe for the plaintiff and Shri. Pudke for defendant no.1.

3. The present suit is filed by the plaintiff for declaration, permanent and mandatory injunction against defendant no.1 and 2. Plaintiff framed declaration against defendant no.2. Suit summons were served on defendant no.2 as per Exh.61 and 62 but defendant no.2 failed to appear in the matter. The Ex-party Order was not passed against defendant no.2. Hence, today I pass order below Exh.1 against defendant no.2.

4. Adv. Shri. Gajwe submitted that plaintiff has filed so many applications against defendant no.1 with defendant no.2 for taking action against defendant no.1 and stopping the payment of Pradhan Mantri Awas Yojana. Even after filing these complaints, defendant no.2 release the amount. He further submitted that as complaints were filed by plaintiff with defendant no.2, Grampanchayat became the witness as regards the dispute between plaintiff and defendant no.1. He further submitted that defendant no.2 has not filed written statement.

Therefore, the Secretary of Grampanchayat is required to be called as witness to prove certain facts which are relevant in this matter. Hence, he prayed to allow the application.

5. Adv. Shri. Pudke for the defendant no.1 submitted that plaintiff already examined himself and his witness. He has to prove the case put up by him in the plaint. He cannot take the aid of defendants for proving his case. He further submitted that plaintiff already filed the applications on record. Therefore, there is no need to call defendant no.2 as witness of plaintiff.

6. I have carefully perused the record and the plaint. After perusing the contents in the plaint and the written statement and the documents filed on record, it seems that the dispute as regards the construction of the house by defendant no.1 after payment by Grampanchayat as per the scheme of Pradhan Mantri Awas Yojana. It is the case of the plaintiff that defendant no.1 constructed the house by encroaching upon the road and to that effect, the plaintiff has filed so many complaints with defendant no.2. Considering these facts and the fact that defendant no.2 has not appeared in the suit and failed to file written statement on record, he is necessary to be called as witness in the present set of facts. The issues which is framed below Exh.29 throws burden on the plaintiff to prove the encroachment as well as the entitlement of the reliefs. Hence considering these circumstances, the Secretary Grampanchayat Village Gada is required to be called. Hence, I pass following order.

- ORDER -

- 1] The application is allowed.
- 2] Call the witness as prayed in the application.
- 3] Plaintiff to deposit the witness Bhatta in the Court.

Kamptee
Date : 07/08/2025.

(Mohan R. Kamat)
Civil Judge, Junior Division,
Kamptee.