

MHNS130007302011



**R.C.S./1300172/2011**

Sau.Allanur Pyare Khatik

Vs.

Smt.Sonubai Baburao Ranjawe

etc.

**ORDER BELOW EXH.NO.91 IN**  
**REGULAR CIVIL SUIT NO.172/2011**

**Contentions of the plaintiff are that-**

**01]** The plaintiff has moved this application for seeking permission to adduce additional evidence.

**02]** The plaintiff has contended that inadvertently she has closed his evidence and filed pursis to that effect. Defence is evidence is started. The suit property is situated within the limits Ozhar Nagar Parishad. Construction of the suit property and its permission is related to defendant No.2. The Court Commissioner was appointed in the suit for inspection of disputed construction. Commission report is filed in this case. Therefore, evidence of defendant No.2 and Court Commissioner is necessary. Therefore, it is prayed that the plaintiff may be permitted to adduce evidence of defendant No.2 and Court Commissioner.

**03]** Defendant No.1 filed say (Exh.94) and resisted the application on the grounds that this application has been filed after 8 years to fill-up lacuna. This application is filed with mala-fide intention. Rights, acquired by the defendant because of efflux of time, will be prejudiced if plaintiff is permitted to lead

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evidence.

**ARGUMENTS:**

04] Learned advocate for the plaintiff argued that evidence sought to be adduced by way of additional evidence is necessary to prove plaintiff's case. Whereabout and address of Court Commissioner came to knowledge of the plaintiff recently. The defendant will get chance to lead his evidence. Hence, no prejudice will be caused to the defendant. The plaintiff's shall not be deprived of his proving case only on the ground of delay. Inconvenience caused to the defendant may be compensated by way of costs.

05] On the other hand, learned advocate for the defendant argued that there is no pleading that address of Court Commissioner found recently. The plaintiff himself had closed evidence by way of pursis. This application is filed only to prolong the trial.

**DISCUSSIONS:**

06] The suit is for permanent injunction. The plaintiff has contended that she has right to way on the basis of easement over the disputed property. Defendant No.1 trying to construct wall by encroaching upon disputed way. Defendant No.1 in her written statement denied existence of way and right to way. Admittedly, Court Commissioner was appointed and his report (Exh.21) is filed in this case. Map is also filed by the

Court Commissioner. Therefore, his evidence is relevant in this case to decide fact in issue.

07] So far as, evidence of defendant No.2 is concerned, the plaintiff could not point out relevancy of his evidence.

08] Record shows that the plaintiff has closed his evidence vide pursis (Exh.76) on 22/11/2016. Re-opening plaintiff's evidence after 8 years will cause inconvenience to the defendants. That may be compensated by way of costs and expediting trial of the suit. Costs of Rs.500/- per year will be reasonable. Hence, I pass following order;

### **ORDER**

- I. Application (Exh.91) is partly allowed.
- II. The plaintiff is permitted to adduce evidence of Court Commissioner subject to payment costs of Rs.4000/- (Rupees Four Thousand only) payable to defendant No.1.
- III. The plaintiff shall pay costs to defendant No.1 and adduce evidence of Court Commissioner till next date without fail.
- IV. Trial of the suit is expedited.

Sd/-

**(A. J. Patil)**

Civil Judge, (Jr. Dn.)  
Pimpalgaon (B).

Dated : 25/07/2025

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Friday, July 25, 2025  
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