

MHRG040002282009



Spl. Civil Suit No.61/2009

**Shantaram W. Phanse
Vs.
Vilas Haribhau Gawand & Ors.**

ORDER BELOW EXH.116

This is an application of the defendant to recall plaintiff for cross examination.

2. perused the application and say. Heard both sides.

3. It is submitted by the defendants that, court has framed the issue whether suit is barred by law of limitation. This issue has to be proved by the plaintiff but still the defendant has to show that the suit is barred by limitation. As the issue has been newly framed defendant wants to cross examine the plaintiff on the said issue. Hence, plaintiff be directed to remain present in the court.

4. Plaintiff has taken objection on the said application. It is submitted by the plaintiff the application is not maintainable as the defendant no. 1 and 2 have not mentioned as to under which provision they have filed the said application. The defendant seeks to recall the plaintiff for cross examination on the point of limitation after having already concluded full and final cross examination of the plaintiff witness on 23/11/2022. The defendant contention that they need to cross examine on limitation because it is a newly emerged issue is factually incorrect and misleading. The plea of limitation was specifically raised by defendant no. 1 and 2 in their written statement. Therefore the defendants were fully aware of this defence when the

plaintiffs witness was in the witness box. Hence, prayed that the application be rejected.

5. Plaintiff has relied on following citations -

1. Akash Vs. Gian Singh & Ors. AIR 2010 Himachal Pradesh 93.

In the said case the ground to recall the witness for cross examination is that the counsel representing the petitioner and respondent no. 2 to 8 did not cross examine the witness effectively due to inadvertence on the point of adverse possession.

2. Vadiraj Naggappa Vernekar Vs. Sharad Chand Prabhakar

Gogate 2009 AIR SCW 2518.

In the said case witness having been examined by way of affidavit evidence was recalled for giving further evidence with regard to the facts not mentioned in the affidavit was not allowed.

6. In the case in hand new issue on the point of limitation has been framed after recording the evidence of the plaintiff. Hence, the defendant wants to cross examine the plaintiff on the point of limitation. Hence, the citation relied by the plaintiff are not helpful.

7. The issue of limitation was newly framed on 06/08/2025 after the completion of evidence of plaintiff and defendants. Since, the issue on the point of limitation has been framed defendant wants to cross examine the plaintiff on the issue of limitation. In the interest of justice opportunity needs to be given to the defendant to cross examine the plaintiff on the issue of limitation. Hence, following order is pass.

ORDER

1. Application Exh. 116 is allowed.

sd/-

Panvel
Dt. 10/06/2026

(Rajshri M. Ganvir)
4th Jt. Civil Judge S.D., Panvel.