



ORDER BELOW EXH.109

This application is filed by the plaintiff no.2 for not pressing evidence affidavit filed at Exh.35 and allow him to file new evidence affidavit.

2. It is statement of the plaintiff no.2 that, on 17.02.2020 he has filed his evidence affidavit, there after as per application Exh.44 some amendments in prayer clause para no.7A were made. Likewise, some part of his pleading was omitted and new was introduced. It's amended plaint was filed on record. In such situation he wants to not press his earlier evidence affidavit Exh.35 and sought permission to file new evidence affidavit.

3. This application is contested by the defendant no.1, by filing say. Contents of this application have been denied by this defendant. This plaintiff has no legal rights to file this application. Hence, this application should be rejected.

4. Heard Ld. Advocate V.N.Wadkar for the plaintiffs and Ld. Advocate N.D. Bhairavkar for the defendant no.1.

5. On perusal of contents of this application as well as say. Plaintiffs have filed this suit against the defendants for partition and separate possession. It is true that plaintiffs have made certain amendments vide orders below Exh.25 and 44. Some of the defendants have admitted claim of the plaintiff, even if the plaintiff no. 2 files his evidence affidavit Exh.35 the Hon'ble Bombay High Court in **Banganga Co. Housing Society Ltd. Vs. Vasanti Gajanan Nerurkar 2015 SCC Online Bom 3411** it is held that, evidence

affidavits can not be withdrawn once filed as they serve as the examination-in-chief. Such affidavits must contain only admissible evidence, and inadmissible or irrelevant material can be struck out to ensure fairness and prevent protracted cross-examination.

6. Therefore, in view of order 18 rule 4 of the Code of Civil Procedure, 1908 it is also clear that once an evidence affidavit is affirmed and filed, it constitutes the witness's examination-in-chief and can not be withdrawn by the deponent. However, there is no impediment to taking of additional chief or filing of a further or supplementary affidavit. Hence, considering above provisions the plaintiff no.2 can not be allowed to withdraw his evidence affidavit filed at exh.35. He may file supplementary affidavit as per provisions of order 18 rule 4 of the Code of Civil procedure, 1908. Therefore, following order is passed.

=ORDER=

1. This application is partly allowed.
2. The plaintiff no.2 is not permitted to withdraw/not press his earlier evidence affidavit filed at Exh.35.
3. The plaintiff no.2 may file supplementary affidavit as per provisions of order 18 rule 4 of the Code of Civil procedure, 1908.

Sd/-

(Yuvraj Chandrakant Patil)
Judicial Magistrate First Class
Chiplun.

Date : 22/09/2025

:-Certificate :-

I Affirm That The Contents Of This Order And The P.D.F. File Of This Order Are Same, Word To Word, As Per The Original Order.

Name Of Stenographer	Shri.M.E.Arekar
Name Of Court	Jt. C.J.J.D.& J.M.F.C.,Chiplun
Date Of Decision	22/09/2025
Order Signed By The P.O. On	22/09/2025
Order Uploaded On	22/09/2025