

ORDER BELOW EXH.118 IN REGULAR CIVIL SUIT NO.262/2006
(Shrirang Patil & Ors. V/s. Laxman Patil(deal) through his LR's and Ors.)
(CNR NO.MHSN020002612006)

The present application has been moved by defendant No.1 and 2 for discarding and de-exhibiting the evidence affidavit filed by plaintiff at Exh.117.

2. According to defendants, this suit was earlier decided on merits on 03.05.2006. However, in appeal, it was remanded back on 23.11.2023 for re-trial subject to certain terms and conditions. Therefore, in view of the operative order No.11 in the judgment of R.C.A.No.359/2012, the plaintiff is barred from examining himself. He is bound to examine the measurement report and concerned surveyor only. Therefore, his evidence affidavit liable to be discarded and de-exhibited.

3. The plaintiff filed his say overleaf. He strongly resisted the present application. According to him, the appellate Court has permitted himself to lead the evidence. Defendants are mis-interpriting the said operative order. Hence, plaintiff prayed for rejection of application.

4. Perused the record. Heard both sides. The entire gist of the application looks to be revolving upon the operative order No.11 in the judgment of R.C.A.No.359/2012. Originally, the suit is for recovery of possession of encroached portion. Therefore, Hon'ble District Court in its judgment has ordered for joint measurement of suit properties and in the operative order No.11 appellate Court has directed that, after joint measurement of land Gat Nos.270, 266, 288 and 289, both parties are liberty to adduce their evidence only to the extent of map and report

prepared by surveyor. In pursuance of said order, the plaintiff has filed his affidavit in lieu of examination-in-chief at Exh.117. However, in order to comply with the operative order No.11 in the judgment of R.C.A.No.359/2012, it is necessary that, both parties should lead their evidence regarding only to map and report prepared by surveyor.

5. Upon perusal of evidence affidavit at Exh.117, it occurs that, the plaintiff has put up his story in short and he has submitted regarding the measurement report prepared by surveyor. No doubt, plaintiff is dominus litis and defendant cannot direct him to lead particular kind of evidence. In such case, the admissibility of evidence led by the plaintiff will be determined only after full fledged trial. However, at this point there occurs no hesitation to read the said evidence affidavit in evidence. However, it should be noted by both the parties that either evidence led by them should be confined only to the extent of map and report prepared by surveyor. Accordingly, I pass following order.

ORDER

1. Application is rejected.
2. Both parties should strictly adhere to the operative order No.11 in R.C.A.No.359/2012

Sangli
Date:-21.07.2025

(Onkar S. Shastri)
5th Jt. Civil Judge Jr. Dn., Sangli.

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer :- R. B. Samalewale

Name of the Court :- Shri. O. S. Shastri.

5th Jt. Civil Judge Jr. Dn., Sangli.

Date of decision :- 21.07.2025

Order signed by P.O. on :- 21.07.2025

Order uploaded on :- 21.07.2025