

CNR NO.MHST-0500-0255-2012

## IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD

## ORDER BELOW EXH.103

IN

R.C.S. No.154/2012

|                                                                                                    |                |
|----------------------------------------------------------------------------------------------------|----------------|
| 1. Smt. Parubai Ratu Mane & Anr.                                                                   | ...Plaintiffs. |
| <b><i>Versus</i></b>                                                                               |                |
| 1. Smt. Shevantabai Mahadev Mane<br>(deleted since deceased)<br>1(1) Smt. Parubai Ratu Mane & Ors. | ...Defendants. |

Advocate Mr. S. R. Nikam for the plaintiffs.

Advocate Mr. A. A. Nikam for the defendants.

Coram : S. B. Todkar,  
C.J.S.D. Karad.  
Date : 07/01/2025

**ORAL ORDER :**

This is an application filed by Ld. Advocate for the plaintiffs for permission to examine the witness of plaintiffs first and thereafter to examine the plaintiffs lateron.

2. Perused the application and handwritten say given by Ld. Advocate for defendants on the application overleaf. Heard Ld. advocate for both the sides. In support of his argument the Ld. Advocate for plaintiff has placed his reliance on **Sanjay Narayanrao Barde & Anr. Vs. Vimal Keshavrao Bairam & Ors.** reported in AIR 2000 Bombay 384, in which Hon'ble Bombay High Court it is held that,

“Rule 3A of Order 18 of the Code is directory in nature and the only mandatory provision it corporates is to the

extent of obtaining permission of the Court. The normal rule laid down is that the party wanting to examine himself should examine first before any witness is examine. This rule can be deviated only with the permission of the Court. Such permission of the Court, it is desirable, should be obtained before any witness is examined, but such is not the mandate. Such permission can be obtained even at a later stage. By enacting the provision of Rule 3A, the legislature has struck the balance between the right of the party to lead evidence as it wants and the misuse of that right in filling up the lacuna occurring in the evidence already recorded. This balance has been achieved by making it mandatory for the party wanting to deviate from general rule to obtain permission of the Court which would insure that the party is not misusing the right and would not use that right for filling up the lacuna.”

3. As per the contents of the present application original plaintiff No.1 Parubai was the real maternal aunt of witness Balasaheb Pandurang Garud. During the lifetime of husband of Parubai the said witness was used to visit her house. Witness used to cultivate her lands. Parubai and her husbands second wife were depend on the witness. Deceased Mahadev executed will deed in the year 1984 in presence of witness viz. Balaso Pandurang Garud. The witness has constructed new house. He had maintained Parubai and Laxmibai during their lifetime and performed their rituals after their death. There are two will deeds in favour of the plaintiff. Balaso Pandurang Garud is having all the knowledge about the family background of the Parubai and Laxmibai. Therefore, his evidence is important prior to examination of the plaintiff. Hence, the application.

4. It appears from the record that plaintiffs have filed present suit against defendants for partition on the grounds

specifically mentioned in the plaint. After service of writ of summons defendant Nos.2, 3 and 5 appeared before Court and filed their written statement at Exh.53, defendant No.6 filed its written statement at Exh.54, defendant No.1 filed her written statement at Exh.20, additional written statement at Exh.87 respectively. On the basis of rival contentions of the parties my the then Ld. Predecessor framed issues at Exh.69 on 15/09/2015 and additional issues on 16/03/2020. Thereafter, plaintiff has filed an amendment application below Exh.78, which is allowed by my Ld. Predecessor on 20/06/2019. Thereafter, the Ld. Advocate for the plaintiff has filed an application below Exh.96 for permission to examine witness viz. Tukaram Anna Mane prior to the examination of plaintiff, which is allowed by Ld. Predecessor on 3/10/2020. The Ld. Advocate for plaintiff has filed application below Exh.98 for examination of witness through Court Commissioner which is also allowed by my Ld. Predecessor on 16/12/2022. Thereafter, present application is filed by the Ld. Advocate of the plaintiff. In the present application the plaintiff has given specific reason why he want to examine the witness first. The plaintiff has specifically contended in the present application that the witness is having all the information prior to his birth about the cultivation of the lands, construction of the house, maintenance of the Parubai and Laxmibai etc. Considering the reasons stated in the application by the Ld. Advocate for the plaintiffs permission needs to be granted to the plaintiffs to examine the witness first in order to give an opportunity to the plaintiffs to put his claim. As the Ld. Advocate for the plaintiffs made out case for the relief claimed in the present application, and shown that examination of the plaintiff prior to the examination of witness will not be proper, the application is deserves to be allowed. Hence, I proceed to pass

following order.

**ORDER**

1. Application Exh.103 is allowed.
2. Permission is granted to examine the witness Balaso Pandurang Garud prior to the examination of the plaintiff as specifically mentioned in the application.

Date : 07/01/2025.  
Place-Karad.

[S. B. Todkar]  
Civil Judge S.D. Karad.