

CNR No.MHST-0500-0444-2007

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD
ORDER BELOW EXH.163 IN R.C.S. NO.83 OF 2007

Shri. Mahesh Krushnrao Nikam	...Plaintiff.
<i>Versus</i>	
1. Smt. Akkatai Sopan Hadgire & Ors.	...Defendants.

Advocate Shri. S. M. Salunkhe for the plaintiff.
 AGP Shri. N. B. Bamane for defendant Nos.5 and 6.

Coram : S. B. Todkar,
 C.J.S.D. Karad.
 Date : 28/08/2025

ORAL ORDER :

This is an application filed on behalf of plaintiff by his advocate seeking permission to file additional affidavit of examination-in-chief of the witness Jaywant Pandurang Thorat.

2. Perused the application and handwritten say given by Ld. advocate for the defendants on the application overleaf. Heard Ld. advocate for both the side.

3. As per contents of present application the witness has filed his affidavit of examination in chief. Her clarification of certain things filing of additional affidavit of examination in chief is necessary. Hence, the application. By filing objection the Ld. advocate for the defendants opposed the application on various grounds.

4. It appears from the record that the plaintiff has filed suit against the defendants for perpetual injunction. After service of writ of summons defendants appeared and filed their counter-claim at Exh.55 against the original plaintiffs for the declaration of deed of conveyance dt.04/07/2006 and agreement to sale dt.04/07/2006 are not binding on them and filed their written statement of the plaint at Exh.57.

Plaintiff has filed his written statement to the counter-claim at Exh.67. Court has framed issues at Exh.58. Court has casted duty to prove issue No.1 and 2 on the plaintiff and issue Nos.3 and 4 on the defendants. Thereafter plaintiff has filed affidavit of examination in chief at P.W.1 Mahesh at Exh.60, his cross-examination is completed. Thereafter he has examined P.W.2 Mandar at Exh.80, his cross-examination is completed. Plaintiff has filed evidence closed pursis at Exh.97 and has also filed one another pursis at Exh.98 reserving his right to file rebuttal evidence after the completion of defendants side evidence. Thereafter, on behalf of defendants Nos.1 to 4 have filed affidavit of D.W.1 Gajanan at Exh.100, his cross-examination is completed. Thereafter, defendants have examined D.W.2 Sambhaji Nikam at Exh.77, his cross-examination is completed and thereafter they have filed applications for issuance of witness summonses, which were allowed by the Court time to time. Thereafter, the plaintiff has filed affidavit of examination in chief of Jaywant Thorat at Exh.132 as P.W.2 On 24/10/2024. Thereafter, in spite of getting opportunities to the defendants they failed to take cross-examination of the plaintiff's witness therefore, Court has passed no cross order on 06/01/2025. Thereafter, on behalf of plaintiff an application below Exh.163 filed for temporary injunction against the defendants on 02/03/2025, which is rejected by this Court on 02/05/2025. Prior to that defendants have file application below Exh.147 for setting aside no cross order passed against them at Exh.132 on 06/01/2025, which is allowed by this Court on 02/05/2025. Thereafter, when the matter was pending for cross-examination of the P.W.2 at Exh.132 at that time, defendants have filed adjournment application at Exh.156 which is granted by this Court as a last chance subject to cost of Rs.750/- payable to the plaintiff's witness. Thereafter, on behalf of plaintiff present application is filed.

5. As per the contents of present application and argument of Ld. advocate for the plaintiff the annexed additional affidavit of examination-in-chief goes to the root of the matter. Considering the nature of suit, rival allegations made by the parties, framed issues it is necessary to give both the parties to prove their allegations or pleas by giving fair and sufficient opportunity. The cross-examination of witness Jaywant is not yet commenced therefore no prejudice will be caused to the defendants if the present application is allowed. In contra, the other side can get opportunity to cross-examine the witness on these points. Additional examination-in-chief is necessary for determining the real question in controversy between the parties. As the Ld. advocate for plaintiff made out case for permission to produce additional affidavit of examination-in-chief, application deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

1. Application is allowed.
2. Permission is granted to plaintiff to file additional affidavit of examination-in-chief of witness Jaywant Pandurang Thorat.

Date : 28/08/2025.

[S. B. Todkar]
Civil Judge Sr. Division, Karad.