

ORDER BELOW EXH. 64 IN R.C.S. NO. 60/2004.
(CNR No.MHST-07000718-2004.)

Vishwanath Digambar Pore --- Plaintiff.
Vs.
Ashok Nivrutti Deshmukh & others --- Defendants.

The present application has been filed by defendant No. 1 for reviving the earlier deleted Issue No. 5. The plaintiff has filed his say at Exhibit 73 and has opposed the application. The application and the say have been perused. Heard the learned Advocates for both parties.

2. Defendant No. 1 contended that they were unaware of the order setting aside the order of abatement; therefore, they did not participate in the proceedings. Issue No. 5 was deleted by order dated 25/02/2024. However, the defendants have taken pleadings regarding the said issue. Therefore, the said issue deserves to be included in the issues.

3. On the other hand, the plaintiff contended that the issue of adverse possession cannot be framed in the suit. In the written statement, the defendants have contended that they have not encroached upon the suit property and have claimed that defendant No. 1 purchased the suit property. There is no pleading of adverse possession. Further, the defendants contended that as per the measurement carried out in the year 1979, they are the owners of the suit property. The defendant cannot take a stand of ownership and ownership by way of adverse possession at the same time. Therefore, the application deserves to be rejected.

4. The plaintiff relied upon the following authority:

Mahabaleshwar Pandurang Halankar Vs. Damodar Pandurang Halankar and others, 2012 (5) Mh.L.J.

Wherein, it is held that: *“The respondent claimed to be Mundkars of the suit property. The property was allegedly purchased by the petitioner from the Confraria of the Church. There are no particulars whatsoever mentioned by the respondent to enable the Court to frame an issue as to whether the respondents are Mundkars of the suit property. The conduct of the respondents further discloses that the alleged claim is dishonest, vague, and not legally sustainable.”*

I have gone through the above-cited authority. The authority is distinguishable on facts; therefore, it is not helpful to the plaintiff.

5. As per Order 14 Rule 5. The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

6. Upon perusal of the record, it appears that the issues were framed at Exhibit 26. Issue No. 5, i.e., “whether the defendant proves adverse possession,” was deleted by order dated 25/02/2014. As per the written statements filed by defendant No. 2 at Exhibit 18 and defendant No. 1 at Exhibit 25, it appears that defendant No. 1 has taken a plea of adverse possession in paragraph No. 3. Moreover, defendant No. 2 has also taken a plea of adverse possession in

paragraphs Nos. 3 and 5. Therefore, the issue of adverse possession is necessary to decide the matter on merits. Therefore, in view of the above discussion, I am of the considered opinion that the present application deserves to be allowed. Accordingly, the following order is passed.

ORDER

- i) The application (Exh. 64) is allowed.
- ii) Issue No. 5 is revived in Exh. 26.

Place :- Karad.
Date :- 09/01/2026.

(Smt. A.V. Mohite)
3rd Jt. Civil Judge (Jr. Div.), Karad.
Tal. Karad, Dist. Satara.