

Vs.

3. The plaintiff has alleged that the suit is filed for a declaration and perpetual injunction. The decision of the Tahsildar in B and D Application No. 15/1997, dated 12/01/2009, is illegal and not binding upon the plaintiff. The alleged measurement is also claimed to be illegal. The present suit was filed on 05/12/2009. The plaintiff served summons to the defendants through a special bailiff. The learned Civil Judge, Junior Division, passed an order of *status quo* on the interim application on 09/12/2009. The defendants and the Circle Officer were aware of this decision. A copy of the suit was provided by the plaintiff to the Circle Officer on 08/12/2009. Despite this, the Circle Officer allegedly prepared a false and bogus possession receipt in his office on 09/12/2009.

4. The plaintiff further alleged that, based on the said illegal possession receipt, the Circle Officer deposed before the Court at Exh. 120. He did not bring any documents while deposing in Court. His examination-in-chief is based on documents filed by the defendants. Since the witness did not produce the documents, his deposition cannot be considered. The witness stated that he would bring the documents on the next date and took two adjournments for the same. However, on the third date, he submitted that the documents were unavailable in the Tahsildar's office. It is claimed that the document is unavailable because no such possession receipt was prepared by visiting the spot. The witness is alleged to have misused his position. Therefore, the examination-in-chief of witness Mahadev Pandurang Babar should be discarded, and the document at Exh. 104, i.e., the alleged possession receipt, should be de-exhibited.

5. On the other hand, the defendants contended that the application is false and baseless. They denied that the *status quo* order was passed by the Court. The examination-in-chief of witness Mahadev Pandurang Babar was recorded on 26/02/2019. The witness brought the original documents on that day and subsequently returned them to his office after deposition. However, the witness's cross-examination was not conducted that day. Later, the *no cross-examination* order was set aside.

6. The defendants further contended that the Circle Officer executed the possession receipt under the instructions of a superior officer. The *status quo* order had not been communicated to the officer until after the possession process was completed on 09/12/2009. Therefore, the plaintiff's allegations are unfounded. The

later unavailability of documents does not imply that the witness gave false testimony. Hence, the evidence should not be discarded, and the documents should not be de-exhibited.

7. Upon perusal of the record, it appears that the present suit was filed for a declaration that the plaintiff is the owner of Suit Property No. 1B by adverse possession. The plaintiff has also sought to declare void and illegal the consolidation record of 1961 concerning Suit Property Nos. 1A and 1B, entries in the Gat map, Mojani Register No. 598/1997, measurement map, and the Tahsildar's decision dated 12/01/2009 in B and D Application No. 15/1997. Additionally, a perpetual injunction against the defendants has been sought.

8. The defendants examined witness No. 2, Mahadev Pandurang Babar, Circle Officer, at Exh. 120 on 26/02/2019. During his examination-in-chief, the document filed by the defendants at Exh. 104, i.e., the certified copy of the possession receipt, was shown to the witness, who admitted its contents. The cross-examination of the witness was deferred upon the oral request of the plaintiff's advocate. On 03/10/2022, the plaintiff's advocate commenced cross-examination, posing two questions before it was again deferred at the witness's request.

9. It appears that the witness might have sought time to produce the original documents. However, the document at Exh. 104 is a certified copy of the record of proceedings in B and D No. 15/1997. Thus, the said document is admissible as evidence. Moreover, the defendants have also filed the certified copy of the

application in B and D No. 15/1997 at Exh. 103, which was filed before the Tahsildar. As a public record, the certified copy is admissible as evidence.

10. Therefore, the mere non-production of the original document, when certified copies are available on record, is no valid ground to discard the evidence of the witness or de-exhibit the document. Furthermore, there is no provision permitting the rejection of the witness's evidence or de-exhibiting documents on such grounds. Hence, the application is liable to be rejected. Costs shall follow the event. Accordingly, I pass the following order.

ORDER

1. The application (Exh.131) stands rejected.
2. Costs in main cause.

Place :- Karad.

Date :- 24/02/2025.

(Smt. A.V. Mohite)
4th Jt.Civil Judge (Jr. Div.),
Karad.