

**IN THE COURT OF THE CIVIL JUDGE AND JMFC,. JEWARGI
AT JEWARGI.**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 03rd day of August, 2022

O.S.No.178/2015

Between:

Sri. Saleem Patel and Another : **Plaintiffs**
(By Sri.B.B., Adv.,)

And

Sri. Raja Patel and Another : **Defendants**
(By Sri. J.V.H., Adv.,)

I.A.No.8

Sri. Saleem Patel, : **Plaintiff No.1/applicant**

V/s.

Sri. Raja Patel and Another : **Defendants/Opponents**

ORDERS ON IA No.8

The plaintiffs have filed the application U/o 14 rule 5 of CPC and prayed to frame the proposed additional issue.

2. The brief averments of the affidavits filed in support of the application are as follows:-

That the plaintiffs have filed this suit against the defendants seeking relief of declaration and injunction claiming the absolute ownership over the suit property. On the pleadings of parties to the suit Hon'ble court framed some necessary issues. But due to

oversight failed to frame proposed issue which are material to decide real question in controversy. Therefore prays to frame the proposed issues as an additional issue to meet the ends of justice. Hence, this application.

3. On the other hand counsel for the defendants filed objection to the application contending that this Hon'ble has framed the correct issues and not necessary to strike out or frame any other issues or proposed issues given by the plaintiffs. The plaintiffs with an intention to drag the matter filed the false application. Hence prays to dismiss the application.

4. Heard and Perused the records.

5. The points that arise for my consideration are as follows:-

Point No. 1:- Whether the plaintiffs proves that the application filed by them deserves to be allowed?

Point No.2 :- What order?

6. I answer the above points as follows:-

Point No.1 :- In the Affirmative.

Point No.2 :- As per the final orders for the following.

REASONS

7. Point No.1 :- Having heard upon and on perusal of the record, it discloses that the plaintiffs have filed the suit against the defendants for the relief of declaration of title and perpetual injunction in respect of suit scheduled property. On service of suit summons the defendants have appeared through their counsel and filed their written statement contending that the suit property was fallen to the share of branch of defendants in the family partition.

In the same way some other properties were fallen to the share of branch of plaintiff. the plaintiff No.1 and 2 and their mother by name Jaitunabee have executed a receipt on 05-05-1983 by receiving amount of Rs.4,750/- towards their share and suit property is allotted to the share of defendants' father Mashak Patel.

8. Based on the above pleadings the predecessor in office has framed five issues regarding ownership, possession, entitlement of the relief and limitation to file the suit. Thereafter plaintiff side evidence has been closed, when mater posted for cross-examination of DW1 the counsel for the plaintiffs filed the present application and prayed to frame the following proposed issue;

'Whether the defendant No.1 and 2 prove that plaintiffs and their mother Jaitunbee executed a receipt on 05-05-1983 by receiving the amount of Rs.4,750/- towards their share?'

9. On the other hand the counsel for the defendants objected the application contending that this Hon'ble Court has framed necessary issues, hence question of framing the proposed issue does not arise at all.

10. As discussed above the written statement of the defendant No.1 and 2 discloses that they have taken specific contention that plaintiffs and their mother Jaitunbee have executed receipt on 05-05-1983 by receiving Rs.4,750/- cash towards their share and suit property is allotted to the share of defendants' father Mashak Patel. Hence it is proper to frame the said proposed additional issue as per the contention of the defendants. Accordingly the application is liable to be allowed. Hence, I answer the above point in the affirmative.

11. Point No.2 :- For the above reasons, I proceed to the pass the following :-

ORDER

**The I.A. No.8 filed by the plaintiffs U/o 14
Rule 5 of C.P.C is hereby allowed and
Additional Issue 1 is framed.**

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in the open court on this the 03rd day of August 2022.)

**(D.RAMESH)
Civil Judge & JMFC,
Jewargi.**