

MHSN150012332020



(Sachin Sukhdev Pawar V/s. Suresh Shahajirao Patil-3)

(CNR No.:-MHSN15-001233-2020)

ORDER BELOW EXHIBIT 84 IN
SPECIAL CIVIL SUIT No.39/2020
(OLD SPECIAL CIVIL SUIT No.150/2014)

1. Perused application and say of defendant No.1 Exhibit 86. Heard both side at length.

2. This is suit for declaration of possession of the suit property 1/B. Defendant No.1 is a tenant in the suit property, as per the tenancy agreement in between defendant No.1 and 2. Defendant No.3 was the power-of-attorney of plaintiff. Defendant No.4 is the father of plaintiff.

3. On 07/11/1998 an agreement was executed in between plaintiff and defendant No.2 through the power-of-attorney defendant No.3 regarding the suit property, whereby it was agreed to transfer the ownership of the suit property i.e. the suit shop in favour of defendant No.2 without consideration. Said agreement was a development agreement, whereby defendant No.2 handed over the possession of the suit property in consideration of the suit shop.

4. Plaintiff challenged said power-of-attorney and claimed that, the agreement dated 07/11/1998 is executed behind his back and without knowledge and consent of plaintiff and thus same is not binding upon plaintiff. Defendant No.2 allegedly developed the suit property claiming failure at the instance of plaintiff to develop the same. As per agreement dated 07/11/1998 and for such development received Rs.2,00,000/- from defendant No.1 and inducted defendant No.1 as a tenant vide tenancy agreement dated 24/07/2012. Plaintiff has also challenged the tenancy agreement.

5. The suit proceeded *ex-parte* against defendant No.2 to 4. Whereas, defendant No.1 vide his *written-statement Exhibit 14* denied the suit claim in *toto*. He claimed that, plaintiff was not sole owner of the suit property. But, the suit property was and is joint family property of plaintiff, plaintiff's father and his brothers. It was only purchased in the name of plaintiff from the funds of joint family. Defendant No.1 claimed that, as defendant No.2 was the possessor of the suit property, as per agreement dated 07/11/1998 he got ownership and possession of the suit shop in consideration of handing over the property for development through plaintiff. As defendant made expenses of construction on development and he being owner thereof, he executed an agreement in favour of defendant No.1. Thus, he denied the suit claim and sought to dismiss the same.

6. In view of rival pleadings, learned predecessor recorded issues below *Exhibit 25*.

7. Accordingly, plaintiff examined himself through his power-of-attorney i.e. her mother vide *Exhibit 40* affidavit.

8. Thereafter, defendant No.1 got amended *written-statement* and raised additional explanatory pleadings in paragraph No.3/A and 3/B. Inconsequence, plaintiff filed additional affidavit of *examination-in-chief*. Thereafter, *cross-examination* of plaintiff is completed.

9. Now, the suit is pending for further evidence of plaintiff. At this stage, plaintiff filed the present application claiming recording of additional issues as per the amended *written-statement*. Plaintiff sought to frame additional issues as follows;

- i. *Whether the suit property is owned by defendant No.2 and whether defendant No.2 has right to execute tenancy agreement ?*
- ii. *Whether defendants prove that the consideration for purchasing the suit property vide sale deed 08/07/1987 has been paid from the funds of joint family ?*
- iii. *Do defendants prove that he made expenses for construction of the suit shop ?*
- iv. *Does defendant No.1 prove that he executed power-of-attorney in favour of defendant No.2 and paid Rs.2,00,000/-*

10. Vide his reply *Exhibit 86*, defendant No.1 opposed the application claiming that, the suit is for declaration of ownership and possession. As per *written-statement* of defendant No.1 specific

and proper issues have been framed. Now, the evidence of plaintiff is also completed. Only to fill-up the lacuna brought out during the *cross-examination* of plaintiff, this application is filed. Plaintiff only to delay the hearing and to harass defendant No.1 has filed this application. Hence, sought to reject the same.

11. In view of rival claims, following points arises for my consideration. I have recorded my findings thereon for the reasons recorded thereunder.

Sr. No.	Points	Findings
1.	Whether the additional issues as sought are essential to decide the suit on merit ?	NO.
2.	What order ?	As per final order.

R E A S O N S

AS TO POINT No.1 & 2:-

12. In an unamended *written-statement* defendant No.1 had already made pleadings about the ownership of the suit property. Defendant No.1 had already claimed that, the suit property, though purchased only in the name of plaintiff, is the joint family property. Said pleadings have been explained further by the amendment in *written-statement* with addition of paragraph No.3/A and 3/B.

13. So also, in paragraph No.4 of the unamended *written-statement* there are pleadings about the consideration of Rs.6,00,000/- paid by defendant No.1 to defendant No.2 as per the tenancy agreement. As such, by amendment in the *written-*

statement, defendant No.1 had merely explained and elaborated the pleadings, which were already made. Thus, no additional claims or issues raised by defendant No.1 with amendment in amended *written-statement*.

14. The issue of ownership of the suit property is already framed as *Issue No.1*. The proposed issue No.1 as sought by plaintiff is substantially covered under *Issue No.1* already framed. Plaintiff is claiming ownership, which defendant No.1 in defence has denied. Therefore, both issues are inclusive and can be decided by recording findings to *Issue No.1* already framed. So also, the issue about the agreement dated 07/11/1998 in between plaintiff and defendant No.2 and the tenancy agreement dated 24/07/2012 in between defendant No.1 and 2 are also framed as *Issue No.3 & 4*. Thus, as such, the proposed issue No.2 to 4 are also covered and inclusive in the *Issue No.3 & 4* already framed.

15. As, the suit has been brought by plaintiff, the initial burden is upon plaintiff to prove his title. Plaintiff is a party to the agreement dated 07/11/1998. It has been signed and executed through power-of-attorney of plaintiff. Therefore, the initial burden is upon plaintiff vide Section 101 of *the Indian Evidence Act*.

16. There is no counter claim of defendant No.1. Therefore, it is plaintiff, who would fail, if no evidence led by the either party. Therefore, the issues already framed below *Exhibit 25* are sufficient and proper to decide the real controversy. The issues proposed to be

framed are included and covered and can be answered while recording to findings to *Issue No.1 to 4* already framed. Thus, additional issues are not required, as sought for.

17. Therefore, there appears no ground for plaintiff to claim framing of additional issues only to pass the burden upon defendant No.1, who is otherwise a tenant in the property. Therefore, it can be said that, only to delay the suit and to harass defendant, plaintiff filed the present application. Thus, have to be rejected. Resultantly, I record the answer to points under consideration and following order is passed.

ORDER

1. The application is rejected.
2. Costs in cause.

Vita.

(Sudhir N. Shinde)

Date: 01/07/2023.

Jt. Civil Judge Senior Division, Vita.

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.

Court : Civil Judge Senior Division, Vita.

Judgment/Order signed by

the Presiding Officer on : 01/07/2023.

Judgment/Order uploaded on : 03/07/2023.