

ORDER BELOW EXH.70 IN R.C.S. NO.304/2014.

The present application has filed by the defendant under Order XIV Rule 5 of the Code of Civil Procedure, 1908.

02. The learned Advocate for the defendant urged that in the written statment of defendants No. 01 to 03, they have specifically denied the relationship of the plaintiffs with the father of defendants No.01 and 02. Furthermore, the defendants have also denied that the father of defendants No. 01 and 02, namely Gorakh, had solemnized of second marriage with Sojarbai (plaintiff No.02) and that the plaintiff Nos. 01 and 03 are the children born out of alleged wedlock. However, in view of the denial raised in pleadings a serious dispute has arisen with regard to the relationship and status of the plaintiffs. Therefore, detemination of the said controversy is necessary for proper adjudication of the present suit. Hence, prayed to frame additional issue in view of pleadings of the defendants No. 01 to 03.

03. Per contra, the learned Advocate for the plaintiffs submitted that plaintiffs No. 01 and 03 are the children of Gorakh who is the father of defendants No.01 and 02. Therefore, the plaintiffs No. 01 and 03 being the children of Gorakh possesses all the legal rights passed through him. It is also submitted that Sojarbai (Plaintiff No.02) is the legally wedded wife of Gorakh and that plaintiffs are ready and willing to produce all relevant documentary evidence to

establish Gorakh as father of Plaintiff No. 01 and 03 and husband of Plaintiff No. 02. Therefore, the present application is not sustainable and the issues framed by the Hon'ble Court in the present matter are proper and sufficient. Hence, it is prayed that the application be rejected.

04. Perused the application, say and other material on record. Heard, the Learned Advocates for both parties and considered their submissions.

05. Before delving into the contentions made in the present application it is necessary to go through the provision enshrined under *Order XIV Rule 5 of the Code of Civil Procedure, 1908* which reads as under:-

Order XIV Rule 5- Power to amend, and strike out, issues.-

(1) 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.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

06. From a perusal of the said provision, it is manifest that the Court may amend or frame additional issues at any time

before passing a decree, for determining the matters in controversy between the parties.

07. The present suit has been instituted for reliefs of partition, declaration and perpetual injunction. The defendants have contested the suit by filing their written statement. On 16/02/2023, issues have already been framed by my Learned Predecessor at Exh.54. On careful perusal of the issues framed at Exh. 54, it is revealed that no issue in respect of the solemnization of the marriage of plaintiff No.02 with Gorakh Jore, who is the father of defendants No. 01 and 02, nor with respect to whether the plaintiffs No. 01 and 03 are the children out of the said wedlock.

08. It is well-settled that for the proper adjudication of a case, framing of issues is essential. It enables the parties to lead evidence in support of their respective claims and allows the Court to identify the real points of controversy. Issues serve as the guiding light for both the parties and the Court to determine what evidence must be led and where the truth lies.

09. After careful consideration of the specific denial raised by the defendants No. 01 to 03 in their written statement and consequential dispute regarding the relationship and status of the plaintiffs, determination of the said fact is essential for the just and proper adjudication of the present suit. Since the

said controversy goes to the root of the matter and has a direct bearing on the entitlement of the plaintiffs to claim partition and other reliefs. Therefore, it is essential for determining the matters in controversy between the parties. Hence, an additional issue in that regard is required to be framed. Undoubtedly, both parties will have the liberty to prove their respective claims. Therefore, the application deserves to be allowed. Hence, I proceed to pass the following order:-

ORDER

- 01] The Present application is hereby allowed.
- 02] The following additional issues are framed below Exh.54.
- 2A) Whether the plaintiffs No. 01 and 03 prove that Gorakh, who is the father of defendants No.01 and 02 had contracted second marriage with Sojarbai (plaintiff No.02) and that plaintiffs No. 01 and 03 are born out of said wedlock?**
- 03] Both parties to take note of additional issue.

(Dictated and Pronounced in Open Court.)

Date:- 07/02/2026.
Place:- Jamkhed.

Sd/-
(Anushri B. Phand)
Jt. Civil Judge Junior Division,
Jamkhed.