

ORDER BELOW EXH.140

(Passed on 13th day of November, 2024)

This is an application filed by the counter claimants i.e. the original defendant no. 3 and 4 for framing additional issues in the suit.

2. It is contended by the counter claimants that in the suit they have filed their counter claim at Exh.119 and plaintiff has filed her written statement to said counter claim at Exh.130. The propositions mentioned in counter claim are denied by the plaintiff in her counter claim so issues regarding said material propositions be framed.

3. The plaintiff has filed her say to this application on the overleaf of this application. In her say she has stated that there is no legal heir certificate of Civil Court in favour of counter claimants. Issues are already framed so this application be rejected.

4. Further the defendant no.1 has also filed his say to this application at Exh.141. In his say he has stated that for the proper adjudication it is necessary to frame appropriate issues on the facts pleaded by one party and denied by other. In view of the counter claim additional issues needs to be framed. However issue no. 2 be suggested by counter claimants is not essential as title of counter claimants needs to be established.

5. I have also gone through over all record and specifically counter claim of defendant no. 3 and 4 and written statement to said counter claim filed by the plaintiff at Exh.130. In her written statement to counter claim the plaintiff has denied the most of the contents of counter claim. Further she has mentioned that she has filed this suit for declaration and perpetual injunction. The issues which are mentioned in this application are not required, therefore, this application be rejected.

6. In above circumstances on going through over all record and submissions it appears that in the suit counter claimants are claiming for declaration that they are legal heirs of deceased Vishvambhar Kashiram Sonone and Bhadepatta dated 04.06.2009 executed by defendant no.2 in favour of defendant no.1 is illegal and unlawful. Further the counter claimants are claiming for the possession of suit property along with compensation of Rs. 5,00,000/-. Further they are seeking the relief of perpetual injunction and mesne profit. In such circumstances it is very clear that as per the provision of Order XIV Rule 5 of the Code of Civil Procedure, 1908 the court may at any time before passing the decree amend the issue or frame additional issue on such a terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matter in controversy between the parties shall be so made or framed.

7. Considering the above mentioned provision of law it is very clear that the material proposition affirmed by counter claimants

is denied by the plaintiff in her written statement to counter claim filed at Exh.119. In such circumstances this application deserves to be allowed and additional issues regarding such proposition needs to be framed. Hence, I pass the following order.

ORDER

The application Exh.140 is hereby allowed. The additional issues be framed below Exh.24 as under

- 2-A Whether the counter claimants prove that they are legal heirs of deceased Vishavambhar Sonone ?
- 2-B Whether the counter claimants prove that defendant no.2 had no legal right to get execute the lease patta of suit property in favour of defendant no.1 ?
- 2-C Whether the counter claimants prove that the possession of the defendant no.1 on the basis of lease patta is illegal ?
- 2-D Whether the counter claimants prove that they are entitled for the possession of suit field ?
- 2-E Whether counter claimants are entitled for compensation from plaintiff as sought ?

Date : 13/11/2024.

Sd/-
(**Mahesh S. Kale**)
Civil Judge (Sr. Dn.),
Akot.