



Order below Exh.106 in R.C.S.No.58/2014

- 1) The plaintiffs filed this application under Order XIV, Rule 5 of the Code of Civil Procedure, 1908 for recasting issues at Exh.26.
- 2) Defendant Nos.1 to 3 resisted the application by filing their say on the application.
- 3) The plaintiffs submitted by way of this application that they claimed partition and separate possession of the suit properties. They contended that deceased Ramesh Gonde alienated the suit properties without having legal necessity. Therefore, sale-deeds executed by him in favour of defendant Nos.1 and 2 are not binding on them. Defendant Nos.1 to 3 and 5 contended vide their written statement that the said sale-deeds were executed for legal necessity. Therefore, burden to prove the same lies on the defendants. Issue Nos.2 and 3 are not necessary. These issues are required to be deleted by recasting the issues. Hence, the plaintiffs prayed that the application may kindly be allowed and issues at Exh.26 be recasted.
- 4) Defendant Nos.1 to 3 contended vide their say that issue Nos.2 and 3 were framed in view of the pleadings of the plaintiffs. The plaintiffs contended in their plaint that the suit properties were sold to defendant Nos.1 to 3 for nominal consideration without having any legal necessity. Considering this contention of the plaintiffs, burden to prove the same should be casted on the plaintiffs. Therefore, issue No.4 is required to be recasted. Hence, the defendants sought rejection of the application.
- 5) Perused the record.
- 6) Heard Ld.Advocate Shri.T.A.Shaikh for the plaintiffs and



Ld.Advocate Shri.S.A.Lange for the defendants.

7) Considering the rival contentions raised by the parties in the application and say, and after having heard both the parties, following points arises for my determination. These points are mentioned here-in-below along with my findings for the reasons mentioned there under :-

Sr.No.	Points	Findings
1.	Whether the plaintiffs are entitled for deletion of issue Nos.2 and 3 and recasting of existing issues ?Yes
2.	What order?The application is allowed.

REASONING

AS TO POINT NO.1

8) On perusal of the record, it reveals that the plaintiffs filed this suit against defendant Nos.1 to 6 for partition of the suit properties and for declaring sale-deeds mentioned in plaint paragraph No.5 are not binding on them. Defendant Nos.1 to 3 and 5 contested the suit by filing their written statement at Exh.24. After considering the pleadings of the parties, my Ld. Predecessor-in-office framed issues at Exh.26.

9) On reading the plaint, it reveals that the plaintiffs came with case that their predecessor Ramesh Achyutrao Gonde was under the influence of liquor and he was addicted to gambling. He sold out the suit properties to defendant Nos.1 and 2 for nominal consideration without having any legal necessity. Later on defendant No.1 sold area of land admeasuring H. 0-30 R. and H. 0-50 R. out of Gat No.230 to



defendant Nos.3 and 4 respectively. Defendant No.4 sold land admeasuring H. 0-50 R. out of Gat No.230 to defendant No.5. The plaintiffs are having undivided share in the suit properties. Therefore, sale transactions mentioned in plaint paragraph No.5 are not binding on them. Therefore, they sought partition of the suit properties and for declaration that the sale transactions of the suit properties as mentioned in plaint paragraph No.5 are not binding on them. Per contra, the defendants contended that predecessor of the plaintiffs Ramesh Achyutrao Gonde sold out the suit properties to defendant Nos.1 and 2 for meeting legal necessity of his family. Defendant No.1 sold out land admeasuring H. 0-30 R and H. 0-50 R out of Gat No.230 to defendant Nos.3 and 4 respectively for meeting his legal necessity. Defendant No.4 did also sell land admeasuring H. 0-50 R out of Gat No.230 to defendant No.5 for meeting his legal necessity. The defendants contended that the plaintiffs did not include all the necessary properties in the suit. Therefore, they sought dismissal of the suit.

10) Considering the pleadings of the parties, it reveals that there is no much dispute between the parties about execution of the sale-deeds of the suit properties as mentioned in plaint paragraph No.5. The plaintiffs contended in the application that burden to prove the fact that the sale-deeds of the suit properties were executed for legal necessity lies on the defendants. Whereas, the defendants contended contrarily that burden to prove the same should be on the plaintiffs. Both the parties are at dispute on whom burden should be casted to prove this fact. However, it is clearly revealed from the



pleadings of the parties that it is the defendants who came with positive assertion that the sale-deeds of the suit properties were executed for legal necessity. Considering this positive assertion, my Ld.Predecessor-in-office has rightly framed issue No.4.

11) My Ld.Predecessor-in-office framed issue No.2 regarding the fact of addiction of liquor and gambling by Ramesh Gonde. Further, issue No.3 was framed that the sale-deeds in favour of the defendants are nominal one and without consideration. However, both these issues are unwarranted considering real dispute between the parties and prayers claimed by the plaintiffs. Therefore, issue Nos.2 and 3 are required to be deleted.

12) My Ld.Predecessor-in-office framed issue No.6 as “Whether the plaintiffs prove that the sale-deeds of the suit properties executed by their father Ramesh Gonde and defendant No.1 are not binding on them ? ” This issue covers sale-deeds executed by Ramesh Gonde and defendant No.1. However, in plaint paragraph No.5, the plaintiffs also mentioned sale-deed executed by defendant No.4 in favour of defendant No.5 regarding land admeasuring H. 0-50 R. out of Gat No.230. The plaintiffs sought relief of declaration regarding all the sale-deeds mentioned in plaint paragraph No.5. Considering this aspect, issue No.6 is required to be recasted. Further, considering sequence of the facts in the pleadings of the parties, the said issue needs to be renumbered as “Issue No.2”. The said issue should be recasted as under-

“2. Whether the plaintiffs prove that the sale-deeds of the suit properties as mentioned in plaint paragraph No.5 are not binding



on them ?”

13) The present suit is regarding Gat Nos.230 and 237 mentioned in plaint paragraph No.1. As the disputed properties are plural in number, issue No.1 is required to be recasted in certain respect as under -

“1. Whether the plaintiffs prove that the suit properties are their ancestral properties? ”

14) As issue No.3 is deleted, present issue No.4 is required to be re-numbered as issue No.3.

15) Present issue No.5 is required to be re-numbered as issue No.4 and it should be recasted in certain respect as follows-

“4. Whether the suit is hit by the non-inclusion of necessary properties for the partition ?”

16) As issue No.6 is recasted and re-numbered as issue No.2, present issue No.7 is required to be re-numbered as issue No.5 and it should be recasted in some respect as follows-

“5. Whether the plaintiffs are entitled for the partition of the suit properties ? If yes, what are their shares ?”

17) So far as relief of declaration claimed by the plaintiffs is concerned, no issue is framed. Therefore, new issue No.6 is required to be framed as under-

“6. Whether the plaintiffs are entitled for the relief of declaration as sought by them ?”

18) In consequence of above mentioned changes in the existing issues, present issue No.8 is required to be re-numbered as issue No.7.



19) Upshot of the above discussion is that present issue No.1 is required to be recasted in certain respect as mentioned above. Considering real dispute between the parties, present issue Nos.2 and 3 are unwarranted and consequently, they are required to be deleted. Present issue No.4 is required to be re-numbered as issue No.3. Existing issue No.5 is required to be recasted in certain respect and it is re-numbered as issue No.4. Present issue No.6 needs to be recasted as mentioned above and it should be placed as issue No.2. Present issue No.7 is also required to be recasted in certain respect and it is re-numbered as issue No.5 as discussed above. In so far as prayer regarding relief of declaration is concerned, new issue No.6 is required to be added in the list of issues. Present issue No.8 is re-numbered as issue No.7. The issues are required to be recasted considering the pleadings of the parties and reliefs claimed by the plaintiffs. No loss and harm will be caused to the parties as they have already got opportunity to lead their evidence with respect to their own cases. Considering these reasons, issues at Exh.26 need to be recasted. Hence, I answer point No.1 in affirmative.

AS TO POINT NO.2

20) In view of above discussion, I pass following order:-

ORDER

1) The application at Exh.106 is allowed.

2) Issues at Exh.26 are re-casted as follows:-

“1. Whether the plaintiffs prove that the suit properties are their ancestral properties?”



2. Whether the plaintiffs prove that the sale-deeds of the suit properties as mentioned in plaint paragraph No.5 are not binding on them ?

3. Whether the defendants prove that the suit properties are alienated for legal necessity of family of Ramesh Gonde i.e. family of the plaintiffs ?

4. Whether the suit is hit by the non-inclusion of necessary properties for the partition ?

5. Whether the plaintiffs are entitled for the partition of the suit properties ? If yes, what are their shares ?

6. Whether the plaintiffs are entitled for the relief of declaration as sought by them ?

7. What order and decree ?”

3) Necessary changes be made in the list of Issues at Exh.26.

4) Parties to take note.

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Sd/-

Date : 10.01.2024

Place : Wadwani

(D.M.Hinglajkar)
Civil Judge Junior Division,
Wadwani, Tal.Wadwani, Dist.Beed.

CNR : MHBI17-000218-2014

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R.C.S.No.58/2014
Datta Gonde & Ors. Vs.
Bhagwan Yelwe & Ors.

Certificate

I affirm that the contents of this PDF file are word to word as per original order.

Sd/-
(Amol D. Mule)
Stenographer (Grade-3)
Civil Court Junior Division
Wadwani

Dictated on : 10.01.2024

Transcribed on : 10.01.2024

Checked and signed on : 12.01.2024