

Order Below Exh. 12.

(Date: 05/02/2025)

At the stage of final argument, the present application is taken out by the appellants under Order 41 Rule 27 of the Code of Civil Procedure for permission to examine TILR, Khamgaon.

02. Briefly it is contended that the Ld. Trial Court has framed the issue No. 1 as '*Whether the plaintiff proves that the suit property is ancestral and joint of the plaintiff and the defendant No.1*'. The Ld. Trial Court has given negative finding to the said issue. However the Namuna No. A which is marked as Exh. 122 is the document to prove the issue No. 1. However the counsel for the appellant (original plaintiff) has not advised to the appellant to examine the TILR, therefore the finding to issue No. 1 goes against the appellant. Thus by exercising the powers under Order 41 Rule 27 of the Code of Civil Procedure the appellant may be permitted to examine the TILR, Khamgaon.

03. The respondent No. 2 has filed the reply as per Exh. 13 and strongly opposed the application on the ground that the present application is devoid of merits hence deserve to be rejected.

04. Having heard both sides I have gone through the record. It appears that by virtue of Exh. 105 and 106 the appellant (original plaintiff) has filed the Namuna No. A on record on 14/11/2017. Later during the cross-examination of DW-2 tendered the said document to the defendant No. 2. Whereas the DW-2 Kishor admitted in his cross-examination that after perusal of Exh. 122 that is Namuna No. A, he had purchased the suit property. Therefore the Ld. Trial Court has received the Namuna No. A as of documentary evidence and marked it as a Exh. 122. From this scenario it is very much clear that already Namuna No. A (Exh. 122) become the

documentary evidence on the record. In such eventuality it is the turn of the advocate for the appellant to demonstrate what is the necessity to examine the TILR ? However he failed to demonstrate the same.

05. In addition to above facts on record, I have gone through the Order 41 Rule 27 of the Code of Civil Procedure and found that the Ld. Trial Court has not refused to admit the evidence which ought to have been admitted, it is not the case of the appellant that in spite of due diligence he could not produce the proposed evidence before the trial court, even it is not the case that this appellate court came to the conclusion that it requires any document to be produce or any witness to be examined to enable it to pronounce the judgment. Thus there is reason to say that the appellant's case did not fall under any category of Order 41 Rule 27 (1) (a) (aa) (b), (2).

06. Thus I hold that the present application is sans of merits, and deserves to be rejected. Hence the following order.

Order

1. The application stands rejected.

Date: 05.02.2025.
Place: Khamgaon.

(Laxmikant A. Bidwai)
Adhoc District Judge-1
Khamgaon.

Certificate

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

Name of the Court : Adhoc District Judge1, Khamgaon.

Name of steno and designation: A. A. Tholbare, Stenographer (Grade-2)

Direct Dictated on : 05.02.2025

Uploaded Date : 05.02.2025