

MHCH040000052009



ORDER BELOW EXH.1 IN
REG. CIVIL APPEAL NO.76/2009.
(Passed on 02.07.2022)

1] Today matter is posted for final argument. Both Ld. Counsel Adv. Turankar and Adv. Dhande present before the Court. Court put a query what happened regarding framing of additional issues on 03.04.2019 by my Predecessor. Therefore, this Court take assistance of previous Adv. Nikhade who submitted to the Court that, after framing of additional issue there is no direction as to where additional issue is recorded.

2] On going through the record it reveals that R.C.S. No.6/2001 filed by Nanaji against Laxman on 09.01.2001 for mandatory injunction and possession. That suit came to be decreed as per Judgment dt. 30.10.2009. Against that decree Reg. Appeal No. 76/2009 came to be filed and on 06.09.2017 appeal came to be dismissed. Thereafter, Writ Petition No. 1787/2016 came to be filed. In meantime, application filed by the defendants for amendment in the Written Statement but that application became to be rejected. Against rejection of order Second Appeal No. 773/2017 came to be filed and that second appeal is allowed.

3] In view of direction issued by Hon'ble High Court, Mumbai, Bench at Nagpur in Second Appeal No. 773/2017, the

parties have amended their pleadings. My Predecessor framed additional issues at Exh.70 on 03.04.2019 which reads as,

Additional Issues

- 7-A. Does the defendant prove that original plaintiff had agreed to sell entire Plot No.1 admeasuring 360 sq.mtrs., to him ?
- 7-B. Does he further prove that original plaintiff has executed sale deed of part of the land for his own benefit ?
- 7-C. Whether he further prove that State is necessary party in the present suit ?

4] However, inspite of framing additional evidence but, no direction given regarding taking of additional evidence so, no progress find in this matter. Today, after going through the record and on hearing both the Ld. Counsel at length, I am of the view that it is necessary to give direction as per Order XLI Rule 28 of CPC.

5] Considering, the nature of dispute it is necessary to record the evidence by Ld. Trial Court by giving opportunity to both the parties to lead evidence on the additional issues framed on 03.04.2019. With this, I proceed to pass the following order;

ORDER.

- 1] Both parties are directed to appear before Ld. 2nd Jt. Civil Judge, Jr. Dn., Warora on 16.07.2022 and to lead evidence a fresh on the above issues.
- 2] Ld. 2nd Jt. Civil Judge Jr.Dn., Warora is hereby directed to restore Reg. Civil Suit No.6/2001 on his file and to give opportunity to both the parties to lead evidence on the above issues and then to hear the parties a fresh and to decide all above issues and sent its findings along with reasoning within the period of three months i.e., on or before 18.10.2022 to this Court.
- 3] As matter is pretty old so, Ld. Trial Court is requested to hear (recording of evidence and argument) the matter at least once in a week and to make endeavour to decide above issues as early as possible, means within stipulated time. So that extension for more than 3 months will not be granted.
- 4] The Record and Proceeding of Reg. Civil Suit No.6/2001 be sent to the Court of 2nd Jt. Civil Judge, Jr.Dn., Warora forthwith.

Warora.
Dt. 02.07.2022.

(R. N. Bawankar)
District Judge-1, Warora.

(4)

RCA No.76/2009.
Order below Exh.1.

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

Name of the Stenographer	Divakar P. Temkar, Stenographer Gr.1,
Name of Court	District Judge-1, Warora
Date of Dictation	02.07.2022
Judgment signed by the P.O. on	02.07.2022
Judgment uploaded on	02.07.2022