



Tukaram Shankar Bohare and Ors.
Vs.
Vithabai Vithoba Bohare

ORDER BELOW EXH. 91

This is an application filed by the plaintiffs for addition of issues. The plaintiffs contended that the plaintiff has prayed for the relief of mandatory injunction for removal of construction. However, the issue regarding entitlement of plaintiff for mandatory injunction is not framed. The said issue is necessary. Hence, prayed for framing of additional issue regarding mandatory injunction.

2. The defendant has filed her say to the present application and contended that suitable order may be passed.

3. Read the application. Heard learned advocate for the both parties. Perused the record. It appears that the plaintiff has filed the present suit for perpetual injunction and for mandatory injunction. Record shows that issues have been framed at Exh. 34. From perusal of the issues (Exh.34), it appears that issue regarding burden upon the plaintiff as to the alleged encroached portion with specification is seen to be framed as issue no. 2A.

4. However, it appears that the issue regarding entitlement of plaintiff in respect of mandatory injunction is not seen to be framed. The said issue is seen to be necessary to decide the matter in controversy between the parties. Therefore, in view of Order XIV Rule 5 of the Code of Civil Procedure, it would be proper to frame an issue regarding entitlement of plaintiff for mandatory injunction. Hence, I pass following order.

ORDER

1. The application (Exh. 91) is allowed.
2. The issue framed at Exh. 34 are recasted and issue no. 2B is hereby added as below -

2B - Whether plaintiff is entitled for the relief of mandatory injunction for removal of construction as prayed ?

Date - 11/03/2026.
Place – Amgaon.

(Sameer Gopal Gunari)
Civil Judge, Junior Division
Amgaon