



Ramchandra Dhondiram Asawale & ors.

//Vs//

Anand Tukaram Asawale & ors.

ORDER ON EXHIBIT NO. 43

The present application is filed for recasting issues framed at Exh.35 by plaintiffs. Defendants filed say below Exh.44. Perused the application and say. Heard both sides.

02. On perusal of record it reveals that, at issue no.1 year 1995 is mentioned, however as per pleading in the plaint plaintiffs claimed partition in the year-1969. Thus, said year mentioned in issue no.1 needs to be corrected.

03. Further, plaintiffs contended that, in issue no.2 the burden was casted on plaintiffs, but it should have been casted on defendant no.4 to 8. On perusal of record it reveals that, plaintiffs have filed suit seeking declaration that, alleged will deed be declared as illegal and not binding upon their rights. Thus, when plaintiffs seeking declaration that alleged will deed is illegal, it is for plaintiffs to prove the same. Thus, burden should be on plaintiffs and therefore, issue no.2 need not be re-casted.

04. Plaintiffs further contends that, they are having joint possession only in the suit land bearing Gat No.1027, but issue no.5 is framed for the suit properties. In that regard upon perusal of pleadings of plaintiffs it appears that, plaintiffs in para no.4 of the plaint has specifically contended that, suit property at 1/B is in their possession after partition. Defendants have denied the claim of plaintiffs. Thus, the issue framed at serial no.5 is proper and there is no need to recast the same.

05. Plaintiffs further contended that, new issue in respect of casting burden on defendant no.4 to 8 for proving suit properties as self required properties of deceased Dhondiba Asawale needs to be framed. On perusal of record it reveals that, plaintiffs claimed suit properties as joint family properties and issue in that regard is already framed. Further, defendants have only filed written statement and not counterclaim. Therefore, the burden is on the plaintiffs. Therefore, there is no need of any new issue as contended by plaintiffs. Therefore, in view of above discussion only issue at serial no.1 needs to re-casted. Hence, I proceed to pass following order.

-: ORDER :-

01. The application is partly allowed.
02. Issue no.1 be re-casted and instead of year-1995 year-1969 be inserted.

(Dictated and pronounced in open Court)

Gadhinglaj.
Date: 17/09/2022.

(S. A. Rathod)
2nd Jt. Civil Judge, Junior Division,
Gadhinglaj.

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

Name of stenographer	R. D. Patil.
Name of Court	S. A. Rathod, 2 nd Jt. Civil Judge Jr. Dvn. and Judicial Magistrate First Class, Gadhinglaj.
Date of Dictation	17/09/2022
Order signed by P.O. on	17/09/2022
Order uploaded on	17/09/2022