


|   |  |
|---|--|
| MHKO110000362019<br> | <p style="text-align: center;"><b><u>ORDER BELOW EXH. 53</u></b><br/><b><u>IN R.C.S. No. 05/2019</u></b><br/><b><u>Bapu Gajanan Hande and Ors.</u></b><br/><b><u>Vs.</u></b><br/><b><u>Jayshri Uttam Nalawade and Ors.</u></b></p> |
|---|--|

The present application is filed by the plaintiffs under Order 14 Rule 5 of Code of Civil Procedure (hereinafter referred as CPC) for framing of additional issue. The defendants have filed their say below Exh. 55 and have strongly objected to it.

**02.** Perused the record. Heard the Ld. Advocates for both sides.

**03.** The Ld. Advocate for the plaintiffs submitted that, the present suit is filed by the plaintiffs for declaration, cancellation of sale-deed and perpetual injunction against the defendants. The defendants have appeared in the suit and filed their say and written statement at Exh. 30 and 31. The issues were framed below Exh. 50 on 12/09/2023. However, to settle the dispute between parties the additional issues mentioned in para 3 of the application needs to be framed. Hence, they prayed to allow the application.

**04.** The Ld. Advocate for the defendants submitted that, the present application is totally false, frivolous and wrong. The contention mentioned in the application are not legal one and same is denied in toto by present defendants. The issues framed are correct. The present application is preferred with the intention to prolong the matter. After perusal of the prayer of plaintiff is suit, the additional issues are not necessary for determining the real question in controversy between the parties. By framing additional issues the plaintiffs are trying to swift the burden of proof upon the defendants. The issues were already framed and

therefore there is no need to frame additional issues. Hence, they prayed to reject the application.

**05.** The present suit is filed by the plaintiffs for declaration, cancellation of sale-deed bearing registration no. 7790/2018 and perpetual injunction against the defendants. The issues were framed below Exh. 50 on 12/09/2023. Thereafter, the matter is pending for the evidence of the plaintiffs.

**06.** As per Order 14 Rule 1 of CPC issues arise when there is a material proposition of fact or law affirmed by the one party and denied by the other. Therefore, it is necessary to see at this stage whether the material proposition affirmed by one party and denied by the other shall form distinct issue.

**07.** On perusal of the plaint and the written statement at Exh. 30 and 31 along with the documents filed by both the parties it appears that, the plaintiffs are claiming ownership and possession to the suit property based upon the will dated 12/03/1998 executed by the father of the plaintiffs and defendant no. 2 and 3. The defendants have denied the possession of the plaintiffs over the suit property. In a civil suit the burden of proof based upon preponderance of probability lies upon the plaintiffs. Hence, it is necessary to frame issue in respect of the plaintiffs possession over the suit property only and not that of the defendant no. 1.

**08.** The plaintiffs vide this application are seeking framing of additional issues in respect of the defendant no. 1 being a bonafide purchaser. As per the pleadings in the plaint, the plaintiffs have challenged the sale deed bearing registration no. 7790/2018 executed by the defendant no. 2 and 3 in respect of their share in the suit property in

favour of the defendant no. 1. The defendant no. 1 in her written statement at Exh. 30 claims herself to be a bonafide purchaser.

09. After taking into consideration the rival contentions raised by both the parties in their pleadings it prima facie appears that, an issue in respect of it is already framed below Exh. 50 at Sr. no. 2. Also, the plaintiff being a master of his own suit. The burden is upon them to prove that the sale deed bearing registration no. 7790/2018 is null, void and not binding upon them and not for the defendant to prove that she is bonafide purchaser. Hence, there appears no need to frame additional issues in respect of the defendant being a bonafide purchaser. Hence, in the interest of justice the following order is passed :-

**ORDER**

|           |  |
|-----------|--|
| <b>1.</b> | The application at Exh. 53 is partly allowed.  |
| <b>2.</b> | Following Additional issue is framed below Exh. 50.<br><b>1a - 'Whether the plaintiff proves his possession over the suit property?'</b> |
| <b>3.</b> | No order as to cost.   |

sd/-

Peth-Vadgaon

( R. S. More )

Date : 21.04.2026

3<sup>rd</sup> Jt. Civil Judge, Jr. Dn., Peth-Vadgaon