

Order below Enh155

- The present application is filed by the defendant for recasting of issues. The plaintiff has filed his say on the overleaf of the application and has strongly objected to it.
2. Perused the record. Heard the advocate for both sides.
 3. The ld. Adv. for the defendant submitted that, issues are framed below En 19. However, inadvertently an issue at Sr. No. 2 was framed. It is not related to the subject matter of the suit. Also, the defendant in his written statement has raised a contention that the description of the suit property is not proper. However, an issue is not framed in respect of it. Hence, he prayed that the issue no. 2 be deleted and another issue in place of it be framed. He prayed to allow the application.
 4. Per contra, the ld. Adv. for the plaintiff submitted that, the application is not tenable in the eyes of law. The partition suit bearing RCS No. 113/2013 is decided on merits. However, the partition deeds certified copy could not be obtained due to circumstances beyond reach. The issues framed below Enh 19 are proper and appropriate. There is no need to frame additional issue or delete the existing one at Sr. No. 2. Hence, she prayed to reject the application.
 5. Perused the record. On perusal it appears that the plaintiffs have filed the present suit against the defendant for permanent injunction in respect of the right to use the well ~~prop~~ water mentioned in para no. 1A of the plaint. Issues were accordingly framed below. Enh 19. Issues arise when material proposition of fact or law is affirmed by one party and denied by the other. The entire suit of the plaintiffs is based upon their right to use the well water, as per the share allotted to them. Hence, the issue no. 2 being related to it there seems no reason to delete it.

6. On perusal of the Written Statement filed below Exh 13 it appears that the defendant have raised a defence that the description of the suit property mentioned in the plaint is not proper. It is a material proposition of fact alleged by the defendant in order to constitute his defence. Therefore, it is necessary to frame issue in respect of it. Accordingly, an issue in respect of it is framed below Exh. 19.

7. No loss or prejudice will be caused to the plaintiff if the present application. As both the parties are at liberty to lead additional evidence if required on the issue framed. Hence, in the interest of justice the following order is passed.

ORDER

- 1] The application below Exh 155 is partly allowed.
- 2] Additional issue in respect of ~~just~~ description of suit property being proper and correct is framed below Exh 19.
- 3] No order as to costs.
- 4] The Application is disposed of accordingly.

Hence, the order.

Peth-Vadgaon.
Dt-17/02/26

B. More
17/02/26
3rd Jt. CJJD, Peth-Vadgaon,
Kolhapur.