

MHKO120002862009



Reg. Civil Suit No.48/2009
Order below Exh.111

The present application is filed by the defendant no. 1 to recast the issue and to frame additional issue as under :-

2. (1) Does plaintiff proves that suit property was purchased on the name of Dadu Tuka Powar for joint family of plaintiff and defendant ?

3. The plaintiff failed the file say. Hence, application is proceeded without say of plaintiff. But, Ld. advocate for plaintiff prayed to pass appropriate order and Ld. advocate for defendant no. 1 prayed to allow the application. The case is at the stage of final argument. It is the case of the plaintiff that all the ancestral family properties have been partitioned 50 years ago and only suit property is remain unpartitioned. It is further mentioned in Para 3 of plaint that suit property has been purchased when the family was joint. But, according to defendant no. 1 the said property was self acquired property of Dadu Tuka Powar. Although, my Ld. predecessor has framed the issue no. 1 do plaintiffs prove their rights, title over the suit property? In the said issue it will be discussed whether plaintiffs have any right or title, but, it will be more convenient for the purpose of clarification to frame additional issue like do the plaintiff prove that at the time of purchasing suit property i.e. on 28/01/1966 by Dadu Tuka Powar the joint family was existed ?

4. Initial burden is casted upon the plaintiff and if the plaintiff discharged said burden, then, it will shift upon other side. As per the ratio laid down in case of **Applaswami vs. Suryanarayan Murty, ILR 1948 Mad. 440**. Wherein the Hon'ble Madras High Court has held that

under the Hindu law it is settled principle that proof of existence of joint family does not lead to the presumption that property held by any member of the family is joint and burden raised upon anyone to ascertain that any item of property was joint should establish that fact. But, where it is established that family possessed some joint property which is from its nature and relative value may have formed the nucleus from which property in question may have been acquired, the burden will shift to that party alleging self acquisition to establish affirmly that property was acquired without the aid of joint family property.

5. In simple words, there is a initial burden which is casted upon the party who alleges that particular property belongs to joint family property to establish same and if initial burden is discharged, then, burden will shift on other party to prove the fact that particular property is his self acquired property. Therefore, additional issue is required to be framed to that effect. However, the prayer to frame the issue in particular manner as prayed by the defendant no. 1 cannot be allowed. Because, considering the rival pleadings of parties in that manner issue cannot be framed. Hence, I pass the following order -

ORDER

1. Application is rejected.
2. The issues are recasted vide Exh. 35.

Date : 03/10/2025

(N. D. Rudrabhate)
Civil Judge Junior Division,
Gargoti.