



ORDER BELOW EXH.38 IN R.C.S. NO.87/2017.
(Yashwant Kumbhar v. Dhondubai Patil And Ors.)

Defendant No.1 has filed present application for framing of additional issue as under -

‘Does defendant No.1 prove that, she is entitled for 2/3rd share in suit properties including her own 1/3rd share and additional 1/3rd share received by her by virtue of will-deed dated 15.04.2009 of Kashibai ? ’

02. Defendant No.1 contended that, she has filed her written statement vide Exh.20 wherein she has specifically contended that, she herself has 1/3rd share in suit properties and she has received additional 1/3rd share from her mother Kashibai under will-deed dated 15.04.2009 of Kashibai. Thus, defendant No.1 has 2/3rd share in suit properties. However, issue in respect of will-deed of Kashibai has not been framed vide Exh.24. Hence, she prayed that, in view of her pleading above mentioned issue needs to be framed vide Exh.24.

03. The plaintiff has strongly resisted present application by filing his say vide Exh.39. He contended that, in R.C.S.No.51/2009 filed for partition and separate possession of present suit properties it is held that, present defendant No.1 is entitled for half share in suit properties. In said suit, present defendant No.1 has not averred about alleged will-deed of Kashibai. In such circumstances, defendant No.1 can not claim for additional 1/3rd share under will-deed dated 15.04.2009 of Kashibai. Thus, present application is devoid of merits. The plaintiff lastly prayed that, present application may be rejected with cost.

04. Heard learned advocates for both the parties, at length. They have argued in consonance of their contentions.

05. On perusal of record and proceeding it appears that, this is a suit for partition and separate possession of suit properties. My learned Predecessor has framed issues vide Exh.24. It appears that, even though defendant No.1 has contended that, she is entitled for $2/3^{\text{rd}}$ share in suit properties including her own $1/3^{\text{rd}}$ share and additional $1/3^{\text{rd}}$ share received by her by virtue of will-deed dated 15.04.2009 of Kashibai, she has neither filed counter-claim in respect of said claim nor paid necessary Court fees for seeking declaration in respect of her share in suit properties on the basis of alleged will-deed of Kashibai. Hence, my learned Predecessor has not framed issue in respect of alleged will-deed of Kashibai vide Exh.24. Apart from this, today the Court has recasted issues vide Exh.24 wherein issue No.1 is framed as 'What would be respective shares of defendant Nos.1 to 3 in suit properties ?' In view of recasted issue No.1, there is no need to frame above mentioned proposed additional issue. Hence, present application is liable to be rejected. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.38) is rejected.
2. Both the parties shall bear their own cost.

(Dictated and pronounced in the Open Court).

Date : 02.07.2026.

(Balasaheb S. Gaikwad)
Civil Judge, Jr. Division,
Kurundwad.