

MHKO190003552005



R.C.S.No.20/2012

Shivaji Dattu Thikpurle etc. 2 Vs. Keraba Dattu Thikpurle etc. 10

ORDER PASSED BELOW EXH.129

(Date:20/02/2024)

Plaintiffs have filed the present application under Order XIV Rule 5 of the Code of Civil Procedure for framing of an additional issue.

2. Defendant No.1 given no objection on the application. Other defendants failed to file their say.

3. Heard the Ld. Advocate for plaintiffs and defendant No.1. Other defendants failed to advance argument on the present application.

4. Perused the record. It appears that plaintiffs have filed the present suit for declaration, partition and perpetual injunction. Plaintiffs claimed declaration that the Will Deed No.3470 is false, bogus, sham and illegal, and it is not binding on their share. Defendants Nos.1 to 4 have filed their W.S at Exh.74 and contended that deceased Dattu Thikpurle has executed Will Deed dated 08/12/2004. Therefore, the prayer of plaintiffs regarding Will Deed is erroneous.

5. Plaintiffs prayed in the present application for framing of an additional issue that "*Whether defendant Nos.1 to 4 prove that deceased Dattu Laxman Thikpurle has bequeathed the suit properties by Will Deed dated 17/09/2004 in favour of defendant No.1?*". The record shows that

defendant No.1 has given no objection to frame the said additional issue. Other defendants have not challenged the present application. Plaintiffs pleaded that at the time of his death, Dattu Thikpurle was bedridden and his mental as well as physical condition was bad. He did not have any intention to bequeath suit properties by Will. Considering the pleading of both parties, the additional issue as prayed by plaintiffs appears to be necessary. The said additional issue is necessary for complete adjudication of controversies involved in the suit. Hence, the application deserves to be allowed. In the result, I pass following order;

- ORDER -

1. The application Exh.129 is allowed.
2. Additional issue be framed below Exh.75.

Date:20/02/2024

Sd/-
(D. M. G. Malidwale)
Civil Judge Junior Division,
Radhanagari.