

MHLA050010022017



Special Civil Suit No. 9/2017
Gangadhar & oths. Vs. Sambhaji & oths.

Order below Exhibit 350.

This is an application filed by the defendant No.2 to 5 to recast the issue No.4C which was framed on Exhibit-62.

2) The plaintiffs have filed say to this application at Exhibit-351. They have taken strong objection and prayed to reject the application.

3) Heard both sides at the length.

4) It is contention and arguments of the defendants that the defendants have no where pleaded that there was a partition with the plaintiffs and defendant No.1 and 6 as per mutation entry No.274 in the year 1984. But on the application Exhibit-63 filed by the plaintiffs the issue No.4C at Exhibit-62 was wrongly framed and it needs to be recast to the extent that the partition was effected as per mutation entry No.356 in the year 1988. It is contention and arguments of the plaintiffs that the defendants have knowledge of the application Exhibit-63 which was filed by the plaintiffs. The defendants have given say to that application. After the arguments that application was decided and issue No.4C was framed. Therefore the defendants have no right to file this application.

5) Read the pleadings of defendants and the previous application Exhibit-63. It is contention of the plaintiffs that late Antram Depe, i.e. father of plaintiff No.1 having apprehension in his mind that the provision of Maharashtra Agricultural Land (Ceiling and Holding) Act, 1961 may attack again over joint family property and Government of Maharashtra will acquire it. Therefore Antram Depe had decided to bifurcate and reduce the holding in the name of other family members, i.e. the plaintiffs and defendants to show the nominal partition as per mutation entry No.274 which was sanctioned in the year 1984. The defendants have no where made this contention. But as per application Exhibit-63, the burden of proving partition as per mutation entry No.274 is kept on defendants No. 2 to 5. The contention of defendants in respect of the partition is only on the basis of mutation entry No.356 in the year 1988. Therefore, issue No.4C needs to be recast partially in that respect. Hence the application deserves is allowed and I pass the following order :

ORDER

The application is allowed and I proceed to recast issue No.4C at Exhibit-62.

Date :- 21/03/2022.

(P. A. Savadikar)
Civil Judge S. D. Ahmedpur
District Latur.