

MHLA110001332014



Order below Exh.209 in RCS No.215/2010
Gorakhnath & Ors. Vs. Mohan & Ors.

By this application defendant Nos.1 and 2 have requested for granting permission to adduce secondary evidence in respect of Memorandum of Partition dated 01/06/1988, for the reasons stated in the application. Plaintiffs have filed their say at **Exh.211** and raised strong objections. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively. I have carefully perused the pleadings of parties and the rival contentions.

2. Record shows that plaintiffs have filed this suit for partition, separate possession and perpetual injunction. Defendant Nos.1 and 2 have filed their WS at **Exh.31** along with their counter claim at **Exh.33**. Plaintiffs have filed their WS at **Exh.51**. In their WS and in their counter claim, defendant Nos.1 and 2 have specifically pleaded regarding the fact of partition that took place between them. Thus, it cannot be held that defendant Nos.1 and 2 are taking plaintiffs for surprise and are stating the said fact for the first time. No prejudice will be caused to plaintiffs if defendant Nos.1 and 2 are permitted to adduce the secondary evidence in respect of Memorandum of Partition dated 01/06/1988, as they will have an opportunity to cross examine the witness. Hence, I pass following order :-

ORDER

1. Application is allowed.
2. Defendant Nos.1 and 2 are hereby permitted to adduce secondary evidence in respect of Memorandum of Partition dated 01/06/1988.
3. No order as to costs.

Order dictated and pronounced in open court.

Date :21/02/2023

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.