

MHND060012192019



R.C.S. No. 132/2019.

Order Below Exhibit 80.

(Dtd. 30.01.2026)

1. The defendant No.2 to 5 have filed this application for framing of additional issue i.e."Whether plaintiff prove that the defendant No.1 was competent to sell the suit land by executing sale-deed No.928/2019 dated 03.06.2019 in favour of the plaintiff, being owner and possessor of the suit land ”?

2. The defendant No.6 has not objected on the present application.

3. The plaintiff has objected on the ground that prayer of plaintiff is limited to the extent of allotting share of defendant No.1 to her on decretal of the suit. The defendant No. 2 to 5 should not prolong the matter by filing such frivolous application. The proposed issue is unnecessary and hence prayed for rejection of the application with cost.

4. Heard Learned Advocate Shri Talnikar for the defendant No. 2 to 5 and learned Advocate Shri M.M. Arilkar for the defendant No.6 and learner Advocate Shri. A.A. Choudary for the plaintiff.

5. Following points arise for determination and the Court gives it findings for the reasons given below :

Points

Findings

- | | |
|---|----------------------------|
| <p>1. Whether the proposed issue is essential for deciding the real controversy involved in the suit?</p> | <p>In the Affirmative.</p> |
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2. What Order?

Application is allowed.

:: REASONS ::

6. The main suit is filed basically for effecting the partition and upon its decretal the portion sold by defendant No.1 in favour of the plaintiff vide registered sale-deed No.928/2019 be allotted to the plaintiff. The perusal of pleadings on behalf of the plaintiff goes to show in its para No. 1 and 11 about capacity of defendant No.1 as owner and possessor of the suit land has got executed the said sale-deed in favour of present plaintiff. Now, it is material to have glance upon the pleadings of defendants uniform of written-statement. They have categorically denied about ownership of defendant No.1 and specifically pleaded that suit lands are undivided share of defendant No.2 to 6 and execution of the sale-deed is behind back of these defendants. This material proposition of fact alleged by the plaintiff in order to prove ownership of defendant No.1 have been denied by the defendants in their written statement. Considering the aspect of *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence), the plaintiff shall be required to prove the ownership of defendant No.1 at the time of execution of alleged sale-deed. Such execution of sale-deed by the defendant No.1 being highly contested in the capacity as a owner and these being material proposition of facts, is denied by the defendants. So, the authenticity of execution of such sale-deed, if proved shall help the Court in adjudicating the controversial issue in its proper prospective. Moreover, framing of such additional issue certainly, shall not be causing prejudice to the plaintiff, and other defendants. By

framing such additional issue, their shall be opportunity for the plaintiff to prove its claim to its fullest extent. In result, the Court answers the point No.1 in the affirmative

As To Point No.2 :

7. As the Court has given findings to the point No.1 in the affirmative, the application deserves to be allowed. Hence, the Court proceed to pass the following order:

:: ORDER ::

1. Application is allowed.
2. The proposed issue be framed as additional issue below Exh-41 as issue No. 2-A:
 - 2A. Whether plaintiff prove that the defendant No.1 was competent to sell the suit land by executing sale-deed No.928/2019 dated 03.06.2019 in favour of the plaintiff ?

Date: 30.01.2026

(A.A.K. Shaikh)
Civil Judge Sr. Dn., Biloli