

CNR No. MHNS130000122025 	<u>R.C.S. No. 01/2025</u> Aashiyana Pathan and 1 other Vs. Aayub Pathan and 2 others.
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ORDER BELOW EXH. 12

1. The present application has been filed by defendant no. 1 to 3 for framing preliminary issue on the point of tenability of the suit under Order 14(2). Perused the application and say filed by plaintiff. The opportunity of hearing was given to the plaintiff and defendants. Heard both at length.

2. Defendant nos. 1 is a father in law, defendant no. 2 is mother in law and defendant no. 3 is a husband of plaintiff no. 1. The defendants filed present application for framing of preliminary issue on the point of tenability of the suit as the suit is barred by law. The defendants contended that the suit is instituted on the false cause of action. The defendants have never intended to give Hiba of the suit property in favor of the plaintiff. The plaintiff was never in possession of the suit property. Hence, they prayed that preliminary issue may kindly be framed in respect of tenability of the suit.

3. Per contra learned Advocate for the plaintiff would submit that the suit is based upon oral Hiba which is permissible and recognized concept under the Muslim Law. This Court has wide and

inherent jurisdiction to try and entertain the suit which is based upon the concept of Hiba. Hence, he prayed that application may kindly be rejected.

4. Before advertng to the main issue in the application it is necessary to reproduce the provision of framing preliminary issue for reference.

Order XIV – Settlement of issues and determination of suit on issues of law or on issues agreed upon-

1.Framing of issues -

2.Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose, may if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

5. In this premise it would be not out of place to mention here that where any issue relates to the jursidiction of the Court or a bar created by any law for the time being in force,the Court may

postpone settlement of the other issues until the preliminary issue with regard to the jurisdiction of the Court or such bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue. Further, the C.P.C. confers no jurisdiction upon the Court to try a suit on mixed issue of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

6. In the present set of facts, prima facie it reveals that the suit is based upon the oral Hiba which is a recognized concept under Mohmmedan Law. Needless to mention here that it is a triable issue whether the plaintiff has right, interest and title over the suit property on the basis of Hiba. Furthermore, the application does not cover neither the aspect of jurisdiction of the Court nor the aspect of a bar to the suit created by any law which is strictly expected under Order 14 Rule 2 of C.P.C. Therefore, the application being devoid of merits deserves to be rejected. In the result, following order is passed.

ORDER

Application Exh. 12 is rejected.

Date :21/04/2025

(P.D.Kolekar)
Civil Judge Junior Division,
Pimpalgaon(B.)