



ORDER BELOW EXH. 42 IN R.C.S No. 165/2013
Amol Hiranman Shirsath Vs. Manik Damodar Jadhav
(Passed on 14/03/2024)

This is an application filed by the defendant for the recasting of issues framed by the court at Exhibit.21

2. By this application defendant submitted that, the court has framed issue at Exh. 21 however, no issue regarding the non-joinder of necessary parties has been framed. This defendant in his para 2 of the written statement specifically pleaded that, the plaintiff have not included all the necessary parties in the present suit, therefore, suit is bad for non-joinder of necessary parties. Hence, prayed for frame additional issue as a “ ***Is the suit is bad for non-joinder of necessary parties ?***”

3. Plaintiff filed his say on the back leaf of the present application stating therein that, the suit is filed for the specific performance of contract dated 13/07/2000, therefore, this plaintiff filed suit against parties to the contract. Moreover, this defendant also not specifically stated that, who is necessary parties, and without whom decree cannot be passed. So, this application filed only to prolonging the case. Hence, prayed for reject the present application.

4. Perused the application and say. Heard. Perused record. It

appears that the present suit is filed by the plaintiff for specific performance of the contract. It is settled law that while framing issues court has to consider entire pleading and documents on record. *Order 14 Rule 1 of the Code of Civil Procedure provides that the issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. For that purpose*, I have perused the written statement of these defendants at Exh. 17 para 2 of the same shows that, these defendants raised issue regarding that, the suit is bad for non-joinder of necessary parties. I have also perused the issues at exhibit 21 which do not shows any issue in this regard.

5. *Order-14 Rule-5 of the Code of Civil Procedure empowers the court to amend and strike out issues at any stage before the decree is passed.* In this backdrop of aforesaid facts, this court thinks that the recasting of issues is necessary for determining the matter in controversy between the parties. So also, it is required for avoiding further litigation. In this circumstance, I am going to recast issue below Exhibit 21. So, issue regarding non-joinder of necessary parties must be frame for avoiding multiplicity of the proceedings. Hence, in the interest of justice, the court is convinced to pass the following order.

ORDER

1. The application Exh-42 is allowed.
2. See amended issue below Exh-21.
3. The parties are called upon and file their evidence accordingly.

Dated:14/03/2024

Sd/-
(Ashwini A.Pandit)
2nd Joint Civil Judge Junior Division
Dindori(MH03260)