

R.C.S. No. 69/2015
Laxman Gotya Gaikwad
Vs.
Mansaram Ramu Gaikwad & Ors.

Order Below Exh. 57

The present application is filed by the defendants to frame additional issue in the present suit.

The defendants contends that they have filed written statement at Exh. 12 and have submitted that mother of Ramu Gotya Gaikwad started living with another man after death of her husband Gotya Bhorya Gaikwad. The plaintiff is born out of the said relationship. Hence the plaintiff is not related to the the defendants. Hence, it was necessary to frame issue as to whether the plaintiff is son of Gotya Bhorya Gaikwad?. However, the said issue has not been framed. However, it is necessary to frame the said issue to decide the present matter on merit. Hence, the defendants prayed that the present application be allowed and additional issue as to whether the plaintiff proves that he is son of Gotya Bhorya Gaikwad be framed.

The plaintiff filed his say below the application and submitted that previously RCS No. 90/2012 was pending before this court between the plaintiff and the defendants. The said suit was decided by Judgment dated 11/3/2015. In the said Judgment issue No. 1 was framed as whether plaintiff is son of Gotya Bhorya Gaikwad. The court has recorded its finding to the said issue as affirmative. Thus, the said issue has been decided on merit by this court. Hence, again the said issue cannot be framed. Hence, the present application be rejected.

Ld adv. For the defendants Shri. D.N. Sonwane argued that the defendants have categorically stated in their W.S. that the plaintiff is not son of Gotya Bhorya Gaikwad. Hence, in the interest of Justice and to decide the suit on merit, issue regarding the same needs to be framed. Hence, the present application be allowed.

Per contra ld. Advocate for the plaintiff Shri. G.K. Jadhav argued that Judgment passed in RCS No. 90/2012 is filed at Exh. 53. The issue whether plaintiff is son of Gotya Bhorya Gaikwad has been decided and finally adjudicated by the said Judgment. Hence, the same issue cannot be framed. The present application is filed only to prolong the matter and hence, it deserves to be rejected.

Perused the application and say. Heard ld. advocate for the plaintiff and ld. advocate for the defendants. The present suit is for partition. Issues have been framed in the present suit at Exh. 14. The first issue is framed as Does the plaintiff prove that the suit properties are their ancestral joint family property? Hence, by way of said issue burden is already casted on the plaintiff to prove ancestral nature of the suit property and indirectly his relationship with the common ancestor. Hence, separate issue as regards whether the plaintiff proves that he is son of Gotya Bhorya Gailwad is not required. Also in Judgment passed in RCS No. 90/2012 which is filed at Exh. 53 said issue was already decided. The present suit is at the stage of hearing and it is pending for cross-examination of plaintiff witness No. 2. In such circumstances and at this stage, framing of this additional issue is not required. Considering all the above grounds I passed the following order.

O R D E R

Application (Exh. 57) is rejected.

Date : 1.02.2022
Place : Kalwan

Sd/-
(A. C. Joshi)
Jt. Civil Judge J. D., Kalwan