

ORDER BELOW EXH. 350 (A) IN R.C.S. No.121/2002

Shevantabai Kadam Vs. Minakshi Gulabrao & Ors.

(Passed on 04/11/2025)

1. The present application is filed by Defendant Nos. 15 to 18 for recasting and framing of additional issues. It is contended that the said defendants were subsequently added as parties to the suit and have filed their written statement at Exh. 292 dated 31/07/2018, which has been duly accepted by the Court. It is further contended that in view of the pleadings made therein, certain questions have arisen which are not covered by the issues originally framed at Exh. 73 on 21/06/2010, and therefore, additional issues are required to be framed for proper adjudication. Accordingly, the applicants have proposed three additional issues, namely — (1) whether they received possession of the suit property from Rukminibai Govind Gulabrao by virtue of gift deeds dated 05/07/1976 and 04/06/1977, (2) whether the decision in Regular Civil Suit No. 72/1977 is or was binding upon the present plaintiff, and (3) whether the present suit is maintainable in view of the death of the original plaintiff.

2. The plaintiff has filed a say and strongly opposed the application by denying all contentions raised by the defendants. It is submitted that the applicants are alleged subsequent purchasers of the suit property under a sale deed of 2009, and therefore, the proposed issue No. 1 relating to possession by virtue of gift deeds is irrelevant and beyond pleadings. The plaintiff has further pointed out that in paragraph 19 of the defendants' own written statement, they have admitted that in R.C.S. No. 72/1977, one Maruti Vithoba

Kadam had expired during the pendency of that suit and his legal heirs were not brought on record, and thus, the said judgment can by no stretch of imagination be binding upon the present plaintiff. With respect to proposed issue No. 3, it is submitted that the plaintiff and his predecessor in title are in continuous possession of the suit property and the legal heirs of the deceased plaintiff are already on record, hence the question of maintainability does not arise.

3. Heard both sides. Perused the application, say, written statement at Exh. 292, and the record.

4. It is undisputed that Defendant Nos. 15 to 18 were added as parties subsequent to the framing of the original issues. Under Order XIV Rule 5 of the Code of Civil Procedure, the Court has ample power to amend, strike out or frame additional issues at any stage of the proceedings if it appears necessary for determining the matters in controversy between the parties. On careful perusal of the pleadings of Defendant Nos. 15 to 18, it appears that they have claimed possession of the suit property on the basis of the alleged gift deeds of 1976 and 1977, and have also relied upon the decision in Regular Civil Suit No. 72/1977. These assertions give rise to mixed questions of fact and law which, if not framed as issues, may affect the completeness of adjudication and lead to further disputes. Hence, proposed issue Nos. 1 and 2 appear to be relevant and necessary for a just decision of the case.

5. However, as regards proposed issue No. 3, the record reveals that the legal representatives of the deceased plaintiff are already on record and the suit is being properly prosecuted. The

issue of maintainability on that ground does not arise and is unnecessary. It is also noted that the present suit is for permanent injunction and is at the stage of cross-examination of the defendants, and framing of the additional issues at this stage would not cause any prejudice to either party but will rather facilitate a comprehensive adjudication of the controversy.

6. In view of the above discussion, this Court finds that the proposed issue Nos. 1 and 2 are necessary and proper, whereas proposed issue No. 3 is irrelevant and hence deserves rejection. Hence, I pass following order-

ORDER

1. The application Exh. 350 (A) is hereby partly allowed.
2. The following additional issues shall be framed and added to the original issues framed at Exh. 73:
(1) Whether the defendants prove that, by virtue of the gift deeds dated 05/07/1976 and 04/06/1977, they received possession of the suit property from Rukminibai Govind Gulabrao?
(2) Whether the decision in Regular Civil Suit No. 72/1977 is or was binding upon the present plaintiff?
3. The proposed issue No. 3 is rejected as unnecessary.
4. Proceed with further evidence accordingly.

Pune.
Date : 04-11-2025

[M. W. Jadhav]
Jt Civil Judge, J.D., Bhor

CERTIFICATE

I affirms that the contents of this P. D. F. file order are same word for word as per original order.

Name of the pt :- Hon'ble Smt. Meena V. Jadhav
Court C.J.J.D. & J.M.F.C., Bhore, Pune

Name of the Steno :- M. S. Kondhare L.G.

Date of Order :- 04/11/2025

Signed by P.O. :- 04/11/2025

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