

**ORDER BELOW EXH. 103 IN S.C.S. NO.119/1996**

This application is filed by defendant for framing of additional issue. He contended that this Court has framed issues on 20/11/2023 at **Exh.95** and additional issues are also framed on 18/03/2025. Defendant No. 1 has filed his additional written statement at **Exh.18** and denied that plaintiff is legal owner of the suit property hence, prayed that issue of ownership of suit land needs to be framed and issues No. 2 to 6 needs to be deleted. Hence, the application.

2. Plaintiff resisted the said application and filed his reply at **Exh.104**. He contended that as per amendment order below Exh.40, amendment is carried out. There is no any new case/cause of action brought by plaintiff as per amendment. Defendant has referred plaintiff as vendor in the sale deed and hence, he has no right to deny the title of plaintiff. These issues are proper. Hence, he prayed that the application be rejected.

3. Considering rival contentions of both the parties following points arise for my determination and I record my findings thereon for the reasons mentioned below.

| No. | POINTS                                      | FINDINGS                     |
|-----|---------------------------------------------|------------------------------|
| 1   | Whether application deserves to be allowed? | ... No                       |
| 2   | What Order ?                                | ... Application is rejected. |

**:: REASONS ::**

**POINT NO.1 & 2 :-**

4. Heard both the Ld. Advocates. Perused the record. This is suit for specific performance of agreement, for alternative compensation and

for perpetual injunction. In the said suit, plaintiff has made amendment and filed amended plaint to which defendant No. 1 has filed his additional written statement at **Exh.101**. Defendant No. 1 in his additional written statement has denied that the plaintiff is legal owner of the suit property. Issues were framed by my predecessor on 20/11/2023 at **Exh.95** and additional issue were framed by me on 18/03/2025, in view of amendment below Exh.40. It is contention of the plaintiff that the sale deed dated 23/11/1983 is mortgage by conditional sale and not is absolute sale. Defendant has denied said contention. My predecessor has framed issue No. 2 that “ Does plaintiff prove that the sale deed dated 23/11/1983 is mortgage by condition sale deed?”. I am of the opinion that this issue No.2 carries within it, the issue of ownership and without ownership, sale deed could not be executed. Hence, separate additional issue need not be framed in view of issue No.2 as prayed by defendants.

5. Defendant has prayed for deletion of issues No. 2 to 6. It is pertinent to note that, issues are framed on basis of pleading of both plaintiff and defendants. After going through the pleadings of both the parties my predecessor have framed these issues. Hence, question of deleting the issue No. 2 to 6 does not arise. Hence, I am of the opinion that the application of defendant is devoid of merits hence, needs to be rejected. In view of my above discussion, I answer Point No.1 in the negative and in answer the Point No.2 I pass the following order.

### **ORDER**

Application is rejected.

Panvel.  
Date : 16-06-2025.

(Nayomi P. Pawar)  
Civil Judge, Senior Division Panvel.