

MHRT040004422014



ORDER BELOW EXH. 59 IN
REGULAR CIVIL APPEAL NO. 49 OF 2014

Aadam Ishamuddin Yete	Appellant
Versus	
Ibrahim Ishamuddin Yete	Respondent

1. The appellant preferred application to allow him to lead evidence. It is submitted that the application for amendment of suit was allowed. Accordingly amendment is carried out. The Respondents have filed amended written statement. The newly added property survey No.3 hissa No.8/1 at Kuduk Budruk is incorporated in the suit. There shall be explanation of new number as added after amendment of the suit property. The issues were framed on the basis of pleadings prior to amendment. However by order dated 19-03-2024 the Court is of the opinion that framing of additional issue is not necessary. However evidence in respect of property survey No.3 hissa No.8/1 shall be given. Therefore the appellant be given opportunity to lead additional evidence.

2. Per contra the respondent resisted the application by filing say below Exh.61. It is contended that the suit

R.C.S.No.77/2000 was decided on 14-10-2014. Thereby the ld. Trial Court dismissed the suit. In the present appeal the application is produced on 08-07-2022 when the appeal was kept for dismissal. It is further contended that the application for additional evidence is tendered on 03-05-2024. The appellant may further demand to remand the matter for retrial. It appears that the appellant is not interested to proceed with the appeal. Under the roof of amendment the appellant has sought permission to amend survey number of the suit property i.e. survey No.3 hissa No.8A admeasuring 4R in the place of survey No.9 hissa No.30/3 admeasuring 3R. No pleading is made as to how appellant has became owner of the amended suit property. Therefore appellant cannot be allowed to lead further evidence.

3. Heard Ld. Advocate of both the parties. It must be considered that the R.C.S.No.77/2000 was filed for partition of one ana share of the appellant in the suit property. So also the appellant has sought half share in the mango trees and other trees.

4. It must be noted that there is no pleading that how the amended suit property was acquired by the appellant. The suit No.77/2000 is for partition. The amendment is made after 10 years of Judgment and decree in R.C.S.No. 77/2000. It must be considered that the appeal was kept for dismissal for default and thereafter the appellant has first preferred application for amendment of the suit property and thereafter produced this

application for additional evidence. The amendment made is in respect of survey number of the suit property and area of the suit property i.e. survey No.3 hissa No.8/1 in place of survey No.9 hissa No.30/3 and the area which was previously shown 3R is now shown 4R. There is no submission that the Ld. Trial Court refused to lead evidence on this point. There is no submission that the suit property was not within the knowledge of the appellant, or the documents could not have produced at that time when the decree appealed against was passed. There is no submission that the Court requires any document to be produced or any witness to be examined to enable it to pronounce Judgment or for any other substantial cause. Under such circumstances there is no need for additional evidence in respect of amended suit property. In the result I pass following order.

ORDER

Application stands rejected.

Khed.

Date :- 11.07.2024

(P. S. Chandgude)

District Judge -2, Khed,
Tal. Khed, Dist. Ratnagiri.

Certificate

I affirm that, contents of this P.D.F.file Judgment/order are same, word to word, as per the original Judgment /order.

Name of the English Stenographer	Mrs.V.S.Kulkarni
Name of the Court	Shri. P. S. Chandgude, District Judge-2 Khed, Dist. Ratnagiri.
Date of Pronouncement	11.07.2024
Judgment/order Signed On	11.07.2024
Judgment/order Uploaded On	11.07.2024