

MHRT080000832021**Order Below Exh.88 in****R.C.S. No. 13/2021**

1. in the suit for partition and perpetual injunction, plaintiff has prayed to re cast issues. Issues are settled by this Court dated 23/02/2023.

2. Read application. Heard learned advocated for both the parties.

3. Learned advocate for plaintiff argued that as mentioned in Exh. 26, defendant is contending that suit property is owned by defendant No. 1 to 3. Defendant No. 5 to 25 have no concern with suit property. It is the contention of plaintiff that suit property is ancestral property of plaintiff and def. No 5 to 25. Hence additional issue needs to be framed as to,whether.

“Does defendant no.1&2 proves that they are the owner of suit property and they got the share from Govind?”

4. To this application, say is filed by learned advocate for defendant no 1 to 4. It is argued that issues are already framed. Hence this application is filed only to prolong the matter. Hence, application be rejected.

5. I have perused entire record. It appears that the suit is for partition of suit property. In order to decide the nature of property an issue was framed that whether plaintiff prayed that suit property is ancestral one. If the issue is answered in negative, ultimately it will come on record the nature of property whether self acquired or not. At this juncture it is necessary to mention here that as per order XIV Rule 5 of CPC, court may at any time before

passing decree amend the issue or framed additional issue as may be necessary for determining real point of controversy between the parties.

6. I have perused written statement of defendant no. 1 and 2 at Exh. 26. It appears that the contention in the plaint are totally denied. In the para no.10, it is submitted that the house property no.20 was in the name of father of defendant no. 1 to 4. Hence, at this point it is denied by defendant suit property is in the name of plaintiff. Accordingly it is necessary to frame additional issue in this regard which needs to be proved by defendant. With this i pass following order.

ORDER

1. Application at Exh.88 is allowed.
2. Additional Issue be framed and be numbered as issue no.7 that whether defendant no. 1 and 2 prove that they are owner of suit property and they got share from Govind ?
3. Both the parties to lead evidence accordingly.
4. Existing issue at Exh. 82 are kept as it is.
5. Consequent order is passed.

Date:- 10/07/2023.

(Shruti H. Patil)
Jt. Civil Judge, J.D.,
Deourkh.

ORDER BELOW EXH. 82

In view of order below Exh.82, Additional issued is added in the issues framed at Exh. 82 and issues are re- casted as follows-

1. Does plaintiff prove that suit property is ancestral one?
2. Does plaintiff prove that they are owner and possessor of suit property?
3. Does plaintiff prove that defendant no. 1 has started constructing house at their common ancestral property without prior permissions required?
4. Does plaintiff prove that defendant no. 1 has obstructed peaceful possession of plaintiff and defendant no. 5 to 25 by way of starting unauthorized construction work at suit property?
5. Does plaintiff prove that suit property isn't yet partitioned?
6. Does plaintiff prove that he and defendant no. 19 to 25 are entitled for partition of suit property? If yes what is the respective share of them?
7. whether defendant no. 1 and 2 prove that they are owner of suit property and they got share from Govind ?
8. Is suit bad for non- joinder of necessary parties?
9. What order?

Date:- 10/07/2023

(Shruti H. Patil)
Jt. Civil Judge, J.D.,
Deourkh.

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh.88 in R.C.S No.13/2021)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer :- T. N. Khade (Jr. Clerk)

Court Name :- Jt. The Court of Civil Judge
(J.D.) & Judicial Magistrate
F.C., Deorukh

Date of decision :- 10/07/2023

Order signed by PO. on :- 10/07/2023

Order digitally signed by :- 11/07/2023
PO. on

Order uploaded on :- 11/07/2023