

RCS No. 22/2016
Babaso Vs. Prakash and others.
CNR No. MHSI080001692016

Order below Exh. 1

1. Perused the record. Heard, both the parties. This case is posted on today for cross examination of plaintiff (PW-1). This suit is instituted for the relief of partition and separate possession of the suit properties.

2. Plaintiff has prayed for the relief of partition and separate possession of the suit properties on the basis of will deed dated 13/10/2015. Therefore, plaintiff has to prove that *Kunda Ramji Gupta* has bequeathed her share from the suit properties in his favour by the will deed dated 13/10/2015. My learned predecessor has framed issues at Exh.43. In view of issue No.2 plaintiff has to prove that *Kunda Ramji Gupta* has bequeathed her share from the suit properties in his favour by the will deed dated 13/10/2015. However, in view of issue No.4, negative burden is casted on defendant to prove that plaintiff has practiced fraud on *Kunda* and under the pretext of execution of *Sathekarar*, he has prepared the will deed. It is well settled principle of Indian Evidence Act that he who asserts has to prove the fact. Therefore, considering the issue No.2, defendant cannot be burdened to prove issue No.4.

3. Thus, the conspectus of the above discussion is that issue No.4 is liable to be deleted. Hence, I proceed to pass the following order -

ORDER

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| 1. | Issue No.4 be deleted. |
| 2. | Issues framed at Exh.43 be renumbered, accordingly. |

Date : 12.04.2023

(T.H.Shaikh)
Nyayadhikari
Gram Nyayalaya, Vaibhavwadi.