

MHSN020010582019

Civil M. A. No. 68/2019**Order Below Ex.153**

By this application, applicant are requested to delete the existing issue No.2 and re-frame it, as suggested, in view of Rule 5 of Order XIV of the Code of Civil Procedure, 1908 (for short “CPC”).

2. It is submitted that by issue No.2 the burden is casted upon the applicant to prove the right created in favour of respondent No.5. However, there was no such pleading of applicant No.1 and 2, and therefore, applicant has suggested new issue in the application’s Para No.5.

3. Respondent No.5 objected the application by filing his say below Ex.155. He contended that the application is presented by lapse of five years and by the said issue burden is casted upon the applicant and accordingly he has to prove that issue. He further contented that parties have adduced evidence as per issue No.2. Therefore, at this stage, such issue cannot be framed as suggested by the applicant.

4. Heard Ld. Advocate for the applicant and Ld. Advocate for the respondent No.5.

5. I have gone through the pleadings of both the parties as well as issue No.2 and 3 framed at Exh.34, on 16.09.2021.

6. I perused para No.1 of the application. In para No. 1A, applicants have described details of policies, under which amount is due. As per paragraph No. 1C, the applicants have described amount and other benefits, which are due from respondent No.4, that is Employment Provident Fund Office. With this description, I perused issue No.2 and 3. Issue No.2 and 3 are framed in respect of these two properties. However, in issue No.2, the burden is casted upon the applicant whereas, by issue No.3 burden is casted upon the respondent No.5. As applicant as well as respondent No.5 claiming these amounts.

7. Applicants claim properties being heirs of the deceased as per law of Hindu Succession Act, 1956 and whereas the respondent No.5 claims interest in the property under the Will, alleged to have been executed by the deceased in her favour.

8. Therefore, issue No.2 is required to be recasted not as suggested by the applicant, but by deleting word “गैर”. So that, clear and specific idea will be given to the parties about the dispute between the parties. By casting such issue, as stated in this para, the burden will be casted upon the applicant to prove their capacity, right to the properties and similarly, as per issue No.3, the burden will be on respondent No.5, to prove her right, interest, in respect of these properties.

9. Ld. Advocate for the applicants informed the court that applicants do not want to adduce any further evidence in respect of the recasted issue No.2. Similarly, Ld. Advocate for the respondent No.5 informed that he does not want to adduce any evidence in this regard. Hence, the matter is listed for the argument. Accordingly application is deserves to be allowed in above terms:

ORDER

1. The application is allowed, as under: -
2. From issue No.2 word “गैर” to be deleted from line line No.3.
3. The rest of the issues are remained intact.
4. The parties to take note thereof.
5. In view of this order, the issue No. 2, in Exh 34 to be recasted accordingly.
6. In view of the submission of both Ld. Advocates that they are not going to adduce an evidence on recasted issue, the matter is listed for the argument.

Date: 31.07.2026

Place: Sangli

(Pravin A. Jagdale)

3rd Jt Civil Judge, Senior Division,
Sangli.