

ORDER BELOW EXH. 152 IN SPL.C.S. 15/2018
(Shankarrao Yadav Vs. Vijaykumar Yadav & Ors.)
[CNR No. MHSN05000497-2018]

1. By way of present application plaintiff prayed to recast Issue No. 3.
2. It is submitted that, the plaintiffs seek declaration, accounts, partition, accordingly possession of suit properties. Defendants had filed Written Statement. Accordingly issues were framed vide Exh. 105. On perusal of issue No. 3 it indicates that burden is casted on plaintiff to disprove the validity of Will executed on 09/06/2015 in favour of defendant No. 1 by their father. In view of relief claimed about declaration against the Will, it is incumbent on the defendant No. 1 to prove that the Will is valid and last will of their father. Therefore, no burden can be casted on plaintiff to disprove the validity of Will. With this submission prayed to recast issue No. 3 and burden be shifted on the defendant in whose favour Will is executed.
3. Defendant No. 1 filed his Say and strongly objected the application. It is submitted that, issues were properly framed. The plaintiff adduced his evidence by way of chief affidavit and matter is posted for cross examination. In this background filing of this application suggest ill motive of the plaintiff to prolong the trial. Considering these facts and circumstances the issue need not be recasted as sought by plaintiff. The application is filed with ill intention to harass the defendant, thus, be rejected.
4. Perused record and proceeding. Heard both sides.

5. The present suit is filed along with other reliefs for declaration against the Will Deed. It is true that plaintiff has sought declaration about non-applicability of Will on his share, accordingly sought partition.

6. It is settled principle of law that, Will is the document which needs to be proved by the propounder of the Will. Herein the present case, certainly, plaintiff sought declaration to the extent of non-applicability. Accordingly Issue No. 3 framed and burden is casted on the plaintiff to prove that Will is not binding on his rights. In view of the rival pleadings and relief sought by the plaintiff, present issue is framed.

7. The Written Statement of defendant No. 1 Vijaykumar clearly indicate that the Will is executed in his favour. Thus, when defendant seek rights bequeathed by virtue of Will upon him, he becomes propounder of the Will and therefore burden needs to be cast on him to prove the validity and legality of the Will. Therefore, an issue is required to be framed against the propounder by casting burden on him to prove the validity and legality of Will and thereafter onus will be shifted on the plaintiff to prove otherwise to protect his right.

8. At present the issue No. 3 directly cast burden on plaintiff to prove that Will is not binding on his rights. It suggest that the validity and legality of the Will is presumed. However, unless and until the validity and legality of Will is proved, the onus would not shift on the plaintiff to prove that said Will is not binding on his rights. Thus, for the above reasons I come to the conclusion that Issue No. 3 needs to be recast. Accordingly, following order.

ORDER

(1) Application is partly allowed.

(2) Issue No. 3 is recast as follows :-

“3. Whether Will dated 09/06/2015 propounded by defendant No. 1 is valid, legal, last and binding on successors of testator i.e. late Vasantrao Yadav ?”

(3) No order as to costs.

Sd/-

(M.M. Chitale)

Islampur

Date : 19/12/2023

Joint Civil Judge Senior Division, Islampur