

MHSN110003002008



ORDER BELOW EXHIBIT 313
REG. CIVIL SUIT NO. 46/2008
(Dastagir Sande Vs. Mohan Jagdale)

1] Defendant has filed application to frame issue under Order 14 of CPC.

2] It is the contention of the Defendant that, Plaintiff has filed suit who is Muslim by caste. The defendants has filed written statement and has specifically contended that, plaintiff is Muslim and he has disposed of the property when he was alive. In such circumstances, now the legal representatives of Abdul Hasan Sande has no right to file the suit. In view of provisions of Muslim Law, the legal representatives do not have birth right. Abdul Hasan Sande has sold property to defendants no. 1 by registered sale deed. So, plaintiffs are not entitled to seek any relief and have any right in the suit property. Accordingly, prayed to frame following issue and allow the application. "According to Muslim Law, whether the suit is maintainable or not?"

3] The plaintiff has filed say below exhibit 314 and resisted the application. It is the contention of plaintiff that, the matter is posted for final argument. Hence, application is not tenable. The defendant has filed application below exhibit 269. At that time, the defendant have not filed the present

application and raised the issue. So, the application is not tenable. Hence, prayed to reject the application.

4] I have gone through the application and the pleadings of both the parties as well as the prayer clause of the plaintiff. The suit is filed for cancellation of sale deed, declaration of ownership, possession and perpetual injunction. It is pertinent to note here that, the plaintiff is seeking perpetual injunction for suit property 1B. On perusal of issues framed below exhibit 106, more particularly issue no. 3, it is in regard of dispossession by defendants to plaintiff from suit property, the burden of proof is on plaintiff. Considering these prayer clause and cause of action of the suit, it cannot be said that, the plaintiff being Muslim community has not got any cause of action to file the suit.

5] The opportunity has to be granted to prove their possession, dispossession and ownership. Moreover, the issue of entitlement framed below exhibit 106 will cover the proposed issue raised by the defendants and certainly the parties will have liberty to argue on the legal aspect which has been raised by the defendants. Considering all this facts and circumstances, I proceed to pass following order.

ORDER

- 1) Application Exhibit 313 is rejected.
- 2) Parties are at liberty to argue the proposed issue at the time of final argument being legal.
- 3) Defendant to bear the costs of application.

Date:- 27/06/2025
Atpadi

(R.B. Kulkarni)
Jt. Civil Judge Junior Division
Atpadi, Dist- Sangli

<u>CERTIFICATE</u>	
I affirm that the contents of this P.D.F. file Order/Judgment is same word for the word as per original Order/Judgment.	
Name of Steno	:- Shri. A.R. Jadhav, Steno (Grade-3)
Court Name	:- R.B. Kulkarni Jt. CJJD & JMFC, Atpadi, Dist- Sangli
Date of Order/Judgment	:- 27/06/2025
Signed by PO on	:- 30/06/2025
PDF uploaded on	:- 30/06/2025