

Order Below Exh. 60
(Passed on 11.09.2023)

The defendant has filed this application for framing of additional issues.

2. He submitted that, plaintiffs have filed this suit for the relief of partition and separate possession. However issues as to, separate share of the defendant from his joint family, joint possession of plaintiffs, non-joinder of necessary parties, bar of principal of partial partition, common hotchpotch and blending of property and bar of premature and vexatious suit have to be framed. He submitted that, no prejudice will be caused to plaintiffs of these issues will be framed. The defendant has raised these objections in his written statement, hence it is necessary to add these issues. Otherwise, the defendant will suffer heavy financial, physical and mental loss.

3. To this application, plaintiffs have filed their say at Exh. 63 to this application. They submitted that, the contents in the application are not legal, true and correct. All the issues framed at Exh. 42 are proper. There is no necessity to frame additional issues as pleaded by the defendant. Only in order to prolong the case, he has filed instant application. Hence, the application is not maintainable and thus prayed to reject the same with costs of Rs. 20,000/-.

4. Perused the Record. It appears that, the plaintiff has filed instant suit for the relief of partition and separate possession. The suit was proceeded exparte. On 14/07/2022. The plaintiff filed her affidavit in lieu of chief examination on 04/07/2022 at Exh. 17. Later on, the defendant appeared in the suit. On 14/11/2022, the exparte order was set aside and his written statement was taken on record on 22/11/2022. On 21/01/2023, the defendant has filed an application vide O. 7 R. 11 which was decided on merits on 09/02/2023. On 28/02/2023, issues were framed at Exh. 42. Then on 2/05/2023, application at Exh. 47 was decided. On 23/06/2023, application filed by the plaintiff for secondary evidence was decided on 23/06/2023. On 01/07/2023, the defendant filed an application vide O. 39 R. 4 CPC, which

was decided on 24/07/2023. Since, 04/07/2022 the case was pending for cross-examination of P. W. No.01.

5. Now, the defendant has filed this application for addition of issues. Thus, on perusal of the plaint, documents along with the plaint, written statement and documents along with the same and the issues framed at Exh. 42, there is no contention by the defendant that, who are the necessary parties to this suit, which have to be joined and the non-joinder of same will defeat the suit. He has never pleaded that, the suit property is the self acquired property and he himself in possession, or that, all the properties or block numbers remained to be joined in the suit to protect the same from the bar of partial partition and common hotchpotch. Then, without pleading of all the above facts, how the defendant wants to lead the evidence is unbelievable. The vexatiousness of the suit can be decided on merits and for that regard issue no. 4 is framed. Moreover, the fact as to joint possession can be presumed when the plaintiff establishes that, the family is Hindu undivided family and the property is the Hindu Undivided Family property. For that respect, issue no.1 and 2 are framed already. Moreover, in regard to issue as to sole and separated possession of the defendant, he has never pleaded that, the suit properties are still holds in the name of his joint family or there are no such even documents on record. Even if the defendant affirms that, the suit properties are not partitioned yet, in his joint family, then in the rebuttal to issue no. 1 and 2, the defendant has very well opportunity to prove the same. With these reasons, there seems no reasons to add such issues in the suit. Hence, the application is liable to be rejected. The defendant himself filed this application without justifiable reason. Hence, it would be probable to direct the defendant to pay costs of Rs. 2000/- to the plaintiff on or before next date. Accordingly, following is the order –

ORDER

1. Application at Exh. 60 is rejected.

2. The defendant is directed to pay costs of Rs. 2000/- to the plaintiff on or before next date
3. On next date, on failure to conduct cross-examination, necessary order be passed against the defendant and the suit be proceeded further.
4. Parties and their respective Ld. Advocates to take note.

SD/-

Place – Pandharpur
Date – 11/09/2023

(S. A. Salunkhe)
5th Jt. C.J.J.D. Pandharpur.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:- M.P.Gheradi (L. G.)
Court	:- Jt.C.J.J.D. & J.M.F.C. Pandharpur
Date	:- 11.09.2023
Judgment/Order signed by the Presiding Officer	:- 12.09.2023
Judgment/Order uploaded on	:- 14.09.2023