

ORDER BELOW EXH.106 IN R.C.S. NO.115/2012
(Dattatraya Gavhane & Anr Vs. Vatsala Gavhane & Ors)
[CNR No.MHSO12-000153-2012]

The plaintiffs have filed present application for framing of additional issues. It is their contention that, the issues are framed as per Exh.22. The plaintiffs have stated that, the sale deed executed by defendants No.1 to 3 are illegal and not binding on the plaintiffs. But, the issue No.3 is framed as; whether sale deed executed to defendant No.3 is illegal and void? So also, the issue No.5 has been framed as; whether the deceased Sambhaji sold out suit property to defendants No.1 to 3 for legal necessity? The burden is not casted upon the defendants. As per mandatory provisions of Hindu Law, the burden to prove legal necessity is on the purchaser. The defendants have mentioned in their written statement that, plaintiff No.1 is not the son of Sambhaji and Sambhaji is not his father. Therefore, the burden is on the defendants to prove that, plaintiff is not the son of Sambhaji and Sambhaji is not his biological father. Therefore, the issues shall be recasted. Hence, the application.

2) The defendants have filed reply at Exh.109 and denied all the contentions of plaintiffs made in the application. The application is made to wash out admissions given by P.W.1 in his evidence and getting opportunity to lead further evidence. The plaintiffs have filed application below Exh.49 and got recast issue No.5. The plaintiffs have suppressed said fact from the court. The issue No.3 has been framed as per the pleadings. The mother of plaintiff No.1 and Sambhaji are expired. Therefore, the D.N.A. test cannot be done to decide; whether Sambhaji is biological father of

plaintiff No.1. Therefore, the plaintiffs have deliberately filed present application. It be rejected with cost.

3) Perused application and say thereon. Heard both sides. The plaintiffs have alleged that, the sale deeds executed by defendants No.1 to 3 are illegal, voidable and not binding upon the plaintiffs' right & share. The issue No.3 is framed as; do plaintiffs prove that the sale deed executed by defendant No.3 is illegal and void? It can be recasted as, “do plaintiffs prove that the sale deeds executed by defendants No.1 to 3 are illegal, void and not binding upon the plaintiffs?”

4) So far as issue No.5 is concerned, it is framed in neutral nature. It reads thus; “whether the deceased Sambhaji sold out suit property to defendants No.1 to 3 for legal necessity?” As per the settled position of law, the burden of proving legal necessity for sale, is on the purchasers/vendee. Therefore, issue No.5 can be recasted and specific burden can be casted upon the defendants No.1 to 3.

5) The last alleged issue that; whether defendants have proved that plaintiff No.1 is not a son from Sambhaji and Sambhaji is not a biological father of plaintiff No.1, cannot be framed. The issue in negative form cannot be framed. It is plaintiffs' own contention that, he is the son of Sambhaji and plaintiff No.2. The defendants have denied said contention of plaintiffs. The suit is for partition and separate possession and for other reliefs. Therefore, it is the duty of plaintiffs to prove their legal share in suit property and to prove that they are legally entitled to have the share in it. The issues No.1 & 2

are framed as; (1) Do the plaintiffs prove that the suit property is joint family property? and (2) Do they further prove that they have legitimate share in the suit property? These are the proper issues and burden is rightly casted upon the plaintiffs. The issues can be framed, recasted, at any stage of the suit as per Order 14, Rule 5 of Code of Civil Procedure. So also, the evidence of plaintiffs is yet not over. Therefore, there is no question of washing out the admissions and to get opportunity to lead further evidence. Moreover, after recasting issues the plaintiffs can lead the evidence only on recasted/amended issues and they cannot be permitted to re-lead whole evidence on original issues. Therefore, the application is liable to be partly allowed. Hence, the following order.

: ORDER :

1. The application below Exh.106 is partly allowed.
2. The issues are being recasted and reframed below Exh.22.
3. No order as to costs.

Date : 12/02/2024

(**Revati M. Kante**)
Jt. Civil Judge, Sr. Div., Barshi.

CERTIFICATE

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

- a) Name of the Stenographer : R.P. Sakinal, Steno. Grade-2
- b) Court : Jt. C.J.S.D. and A.C.J.M.,
Barshi.
- c) Date of Judgment/Order : 12.02.2024
- d) Judgment/Order signed by
the Presiding Officer on : 12.02.2024
- e) Judgment/Order uploaded on : 12.02.2024