

ORDER BELOW EXH. NO. 38

Present application is filed by plaintiff to frame additional issue in regard to nature of property and standing of defendant No.1. It is her contention that she filed present suit for partition, separate possession and declaration. Defendants have given their written statement at Exh. 24 and contended that suit properties are their self acquired properties. They also contended that defendant No.1 is absconded and declaration of civil death can not be asked. Court framed issues at Exh. 37 but it is not framed as per pleading of the defendants. Lastly, prayed to allow the application and prayed to frame issues in regard to fact that Whether defendant No.1 is alive and nature of properties ?

2. Defendants resisted the application on the ground that application is not correct. It is filed to prolong the matter, no hurdle would be caused to plaintiff if issues are not framed. Lastly, they prayed to reject the application.

3. Heard both the parties. It is seen that issues are framed by the court at Exh. 37. On perusal of the record it is seen that defendants have filed their written statement at Exh. 24 and contended that property mentioned in plaint paragraph No.1A has been purchased by defendant No.2 from defendant No.1 and not contended that it is her self acquired property because as per pleading of plaintiff she is not member of her family and defendant No.1 have illicit relation with her. Under such circumstances no need to frame issue about the nature of property in regard to property mentioned in plaint paragraph No.1A. So far as other properties are concerned I have already framed issue in regard to house property and

only the issue in regard to property mentioned in plaint paragraph No. 1B is necessary because defendants claims that said property is their self acquired one. So far as issue in regard to defendant No.1 is alive or dead is concerned, I want to note here that Section 107 & 108 of Indian Evidence Act is clear about it and it is seen that defendants have not claimed that defendant No.1 is alive. It is seen from the pleading that plaintiff demanded declaration of Civil Death of defendant No.1. Hence it is not proper to caste burden on defendants in regard to it. I already framed issue about the fact of declaration sought by plaintiff and the person who sought any relief should prove the same. Hence, I do not found it proper to frame issue No.2 cited by plaintiff in her application. With this I pass following order

ORDER

Application is partly allowed. Issue in regard nature of property mentioned in plaint paragraph No.1B shall be framed below Exh 37.

Date: 14.03.2019

(SOU. J. R. RAUT)
2nd Jt. Civil Judge, Junior Division,
Barshi, Dist. Solapur.

CERTIFICATE

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

- (a) Name of the Stenographer : S. V. Kokate
- (b) Court : Sou. J. R. Raut, 2nd Jt. C.J.J.D. & JMFC, Barshi.
- (c) Judgment/Order signed by P.O. on : 14/03/2019.
- (d) Judgment/Order uploaded on : 19/03/2019.