

**Order Below Exhibit 79.**

Defendant No. 1, 9 & 10 have filed an application for closing the evidence of plaintiff. They submitted that, the issues are framed at Exh. 62 on 24/10/2017. However, after framing of issues, the plaintiff has not lead the evidence. She is prolonging the matter on one or other count. Hence, prayed for closing the evidence of plaintiff. The plaintiff strongly opposed the application. She submitted that, defendant No. 9 & 10 have filed counter claim at Exh. 23 but the said counter claim read and recorded and it is directed to the plaintiff to file say by passing order on Exh. 23 on 03/01/2022. This does not mean that, the plaintiff has prolonged the trial. Defendant No 1, 9 & 10 filed this application with ulterior motive. Hence, prayed for rejection of the application.

2. Heard both parties. No doubt my ld. predecessor on 03/01/2022 passed the order on Exh. 23 and directed to the plaintiff to file say on the counter claim. This exhibit also shows that, the A.S. of this court has submitted its report on 12/03/2020. If the order dated 03/01/2022 would be considered, then the plaintiff has not filed the W.S. to the counter claim till today. The record also shows that, the issues are settled on 24/10/2017. Roznama shows that, from 24/10/2017, the plaintiff on or other count prolonged the matter. She sought adjournments vide Exh. 63, 64, 67, 68, 69, 70, 71, 72, 75, 77 & 78. These applications show that, the plaintiff sought adjournments for 11 times in this 5 years. During this period, on 2 or 3 occasions the suit was kept for dismissal order. Despite this, the plaintiff has not learnt the lesson, she any how prolonged the matter.

3. As per Order IX Rule 8 of the C.P.C., where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an order that suit be dismissed, unless the defendant admits the claim, or part thereof, in which the case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the reminder.

4. This is the procedure, if the plaintiff remained absent and the defendant appears for the hearing. No doubt the plaintiff sought adjournments for 11 times. However, I am of the opinion that, the present suit is for partition so one more opportunity needs to be given to the plaintiff. Now at this moment it is not proper to close the evidence of the plaintiff rather it is proper to direct the plaintiff to proceed with the suit on next date otherwise suit will be dismissed as per Order IX Rule 8 of the C.P.C. Hence, in view of this, application Exh. 79 is rejected with direction to the plaintiff to proceed with the suit on next date otherwise though there would be any reason forwarded by the plaintiff in the adjournment application, the suit will be dismissed in default under Order IX Rule 8 of the C.P.C.

Barshi.  
Dt. 15-12-2022

( S.B.Vijaykar)  
Jt. Civil Judge J.D., Barshi.

**C E R T I F I C A T E**

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          | : | B.B.Salvade                                       |
| (b) | Court                             | : | S.B. Vijaykar,<br>Jt.C.J.J.D.&J.M.F.C.<br>Barshi. |
| (c) | Judgment /Order signed by P.O. on | : | 15/12/2022                                        |
| (d) | Judgment /Order uploaded on       | : | 16/12/2022                                        |