

MHSO130013182012



ORDER BELOW EXHIBIT NO.76

This is an application under Order XIV, Rule 5 of the Code of Civil Procedure, for framing of additional issues.

02. It is contention that the defendant No.3 claimed as adopted son of deceased Shahaji on the basis of registered adoption-deed dated 23/09/1992. The plaintiffs pleaded that the said adoption-deed is void, illegal and not binding upon the plaintiffs. Therefore, the plaintiffs prayed for framing of additional issues.

03. The defendants resisted this application by contending that no relief in respect of adoption-deed has been sought. Therefore, proposed issues are not required to be framed. The defendants further contended that the application has been moved only with intention to prolong the matter.

04. The issues have been framed at Exh.35 by my Ld. Predecessor. The plaintiffs have claimed heirs of deceased Shahaji being wife and daughter. This is the suit for partition and declaration about the sale-deed.

05. This suit is in respect of coparcenary and joint Hindu family property. The defendants have claimed that defendant No.3 is adopted son of deceased Shahaji. As against this, the plaintiffs pleaded that at the time of alleged adoption-deed, age of the defendant No.3 was more than 21 years and as such, he was not

eligible for being adopted. Therefore, the alleged adoption-deed is void and illegal. Accordingly, the aspect of adoption-deed is in controversy which is essential to decide this suit. However, issues in respect of adoption-deed have not been framed. Therefore, the proposed issues are required to be framed.

06. Considering the date of sale-deeds which are of dated 07/11/2001 and 06/02/2002 and also the date of adoption-deed dated 23/09/1992, issue of limitation also arises. However, same has not been framed. Accordingly, I pass following order;

ORDER

1. The issues are recasted.
2. Following issues as issue No.3A to 3C are framed;
“3A) Whether the adoption-deed dated 23/09/1992 is valid ?
3B) Whether the plaintiffs prove that adoption-deed is not legal and not binding upon them ?
3C) Whether suit is within limitation ?”
3. The parties are at liberty to adduce evidence.

Barshi.
Date : 07/12/2023

Sd/-
(J.R.Pathan)
2nd Jt. Civil Judge J.D., Barshi

Exh.35

As per order below Exh.76, issues are recasted.

RECASTED ISSUES

1. Do plaintiffs prove that suit property is ancestral property of themselves and defendant ?
2. Whether partition is already taken place ?
3. Do plaintiffs prove that sale-deed dated 07/11/2001 and 06/02/2002 are not binding on their share ?
- 3A. Whether the adoption-deed dated 23/09/1992 is valid?
- 3B. Whether the plaintiffs prove that adoption-deed is not legal and not binding upon them ?
- 3C. Whether suit is within limitation ?
4. Whether suit is bad for non joinder of necessary parties ?
5. Are plaintiff entitled for partition? If yes, what would be respective shares of both parties?
6. Are plaintiff entitled for declaration ?
7. What order and decree ?

Barshi.
Date : 07/12/2023

Sd/-
(J.R.Pathan)
2nd 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	:	S.R. Barangule
(b)	Court	:	J.R. Pathan, 2 nd Jt. C.J.J.D. & J.M.F.C., Barshi.
(c)	Judgment /Order declared on	:	07/12/2023
(d)	Judgment /Order signed by P.O. on	:	07/12/2023
(e)	Judgment /Order uploaded on	:	07/12/2023