

R.C.S. No. 46/2023

MHST060001872023

ORDER BELOW EXH. 14

(Janardan Shankar Jadhav Vs. Chandrahas Shankar Jadhav)

The plaintiff has filed the present application seeking framing of additional issues, namely:

- (i) Whether the defendant proves that in the year 1980 the suit property was orally partitioned between the plaintiff and defendant ?
- (ii) Whether the defendant proves that in the oral partition in the year 1980 the suit property was allotted to the defendant ?

2. It is the case of the plaintiff that the suit is filed for declaration and perpetual injunction. It is submitted that in the written statement, the defendants have specifically pleaded that an oral partition had taken place in the year 1980 and that the suit property was allotted to the defendant, while another property i.e. Gat no. 184 was allotted to the plaintiff. Hence, according to the plaintiff, the burden lies upon the defendants to prove the said oral partition, and therefore additional issues are required to be framed.

3. The defendants have opposed the application contending that the application is vague, false, and not maintainable. It is further submitted that issues have already been framed by the learned predecessor vide Exhibit 13, and therefore no further issues are required.

4. I have considered the rival submissions and perused the record. It is not in dispute that in the written statement, the defendants have taken a specific plea regarding oral partition in the year 1980 and consequential allotment of the suit property. As per Order XIV Rule 1 of the Code of Civil Procedure, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.

5. Further, under Order XIV Rule 5 of the Code of Civil Procedure, the Court has ample power to amend, strike out or frame additional issues at any stage before passing of the decree, if the same are necessary for determination of the real controversy between the parties.

6. In the present case, the plea of oral partition goes to the root of the matter and directly affects the rights of the parties in respect of the suit property. Framing of the proposed additional issues will not prejudice either party, but would assist the Court in effectively adjudicating the dispute and enable the parties to lead appropriate evidence.

7. In view of the above, the application deserves to be allowed.

ORDER

1. The application is allowed.
2. The following additional issues are hereby framed:-
 - i) Issue No. 4A. Whether the defendant proves that in the year 1980 the suit property was orally partitioned between the plaintiff and defendant?
 - ii) Issue No. 4B. Whether the defendant proves that in the oral partition in the year 1980 the suit property was allotted to the defendant?
3. Cost in main cause.

Dahiwadi
Date: 09/06/2026

Sd/-
(A. Y. Shaikh)
Jt. Civil Judge Jr. Dn., Dahiwadi.