

MHST070005352001



**Order Below Exh. 221 in R.C.S. 325/2001
(Govind Narayan Ashtekar Vs. Baban @ Shankarrao Pandurang
Vellal)**

1. This application is filed by plaintiff for recasting of issues and filed pursis (Exh.222) giving the particulars of issues. It is contended that, the defendant has filed his written statement (Exh. 27-A) and the Court has framed issues (Exh.46) as per the pleadings of the parties. The matter is pending for final argument and at that time the learned advocate for the plaintiff came to know that issue for recovery of possession and mesne profit is not framed and issue No. 9 is not properly framed. In order to avoid multiplicity following issues are necessary.

Whether plaintiff is entitled to the possession of suit property ?

Whether the plaintiff is entitled to mesne profits ?

Whether due to misuse of the property, suit property becomes unsafe and dangerous ?

Therefore, the plaintiff prayed to allow the application and frame said issues.

2. Defendants opposed the application by filing say (Exh. 223). It is contended that, issues for recovery of possession and mesne profit are not necessary and said issues are after thought. The defendant has not obtained profit from wrongful possession of the suit property. Therefore, issue of mesne profit is not necessary. There is no pleading of plaintiff about recovery of possession and mesne profit. Issues are framed by the Court prior to many years. Since then the plaintiff has not filed application for recast of issues. On the contrary plaintiff has filed pursis (Exh. 216). Hence, this application is barred by principle of estoppel. Contending all these, defendants prayed to reject the application.

3. Heard both sides. Shri. A. T. Ghate learned counsel for the plaintiff submits that, the plaintiff has made specific pleading and prayer for recovery of possession and mesne profit. Therefore, issues in respect of said facts and reliefs are necessary to avoid multiplicity of proceedings. No harm will be caused to the defendant if said issues are framed. He therefore, prayed to allow the application.

4. Per contra, Shri. S. N. Thuse learned counsel for the defendant submits that, cause of action for filing the present suit

is notice issued by the plaintiff which does not show the pleading of recovery of possession and mesne profit. The property mentioned in the notice and the present suit is different. Therefore, the suit itself is not maintainable. The defendant has not wrongfully gained profit from the suit property. Therefore, issue of mesne profit is not necessary. There is no pleading of plaintiff about recovery of possession and mesne profit. Issues are framed by the Court prior to many years. Since then the plaintiff has not filed application for recast of issues. The plaintiff has filed pursis (Exh. 216) stating that, there is no necessity frame additional issues. Hence, this application is barred by principle of estoppel. He therefore, prayed to reject the application.

5. The plaintiff is praying for recasting of issues by adding certain issues. Order XIV of the Code of Civil Procedure provides that, issues arise when a material proposition of fact or law is affirmed by one party and denied the other, material proposition of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence and each material proposition affirmed by one party and denied by the other shall form the subject of distinct

issues. Therefore, considering this legal position it is necessary to consider facts and pleadings of the parties.

6. Perusal of pleading of the plaintiff shows that, the plaintiff has specifically pleaded that, in April 2001 the plaintiff has issued notice to the defendant and claimed for recovery of possession and rent and the defendant refused to hand over possession. Therefore, the plaintiff filed this suit for recovery of possession, rent and mesne profit. Record also shows that, the defendant has denied said pleadings of the plaintiff. The defendant has also denied that, he has obtained profits from wrongful possession of the suit property. Therefore, pleadings of the parties shows that there is a material proposition a fact about the recovery of possession and mesne profit. Hence, issues in respect of aspect are necessary which are not framed. Similarly, there is a pleading of the plaintiff that, due to the misuse of the property, the suit property becomes unsafe and dangerous. Said proposition of fact is also denied by the defendant. Hence, said issue is also necessary for deciding the real controversy between the parties. Learned counsel for the defendant submits about the delay in filing this application and pursis (Exh. 216) filed by the plaintiff. Said pursis shows that, the plaintiff has stated that,

there is no need to frame additional issue as per the additional written statement of legal representatives of the defendant. However, considering the pleadings of the parties in my considered opinion issues of mesne profit, possession and conduct of the parties are necessary for deciding the real controversy between the parties. Therefore, submission advanced on behalf of the defendant are not considered. No prejudice will cause to the defendant if additional issues are framed as the defendant will have every right to adduce evidence in respect of said issues. Therefore, the application deserves to be allowed. In the result, I pass the following order.

ORDER

1. The application at Exh. 221 is allowed.
2. Following issues are framed below Exh. 46.
 - 8A. *Whether plaintiff is entitled to the possession of suit property ?*
 - 8B. *Whether the plaintiff is entitled to mesne profits ?*
 - 8C. *Whether due to misuse of the property, suit property becomes unsafe and dangerous ?*

Date : 09/12/2025.

(Prashant P. Kulkarni)
4th Jt. Civil Judge Junior Division,
Karad.