

MHTH170000042014



R.C.S./1700192/2014

**Mahendra Vasudev Patil
Vs.
Chandrakala Chandrakant Patil & Ors.**

ORDER BELOW EXH.125

1] By way of this application, defendant nos. 1 & 2 have prayed to recast issues framed at Exh.80, it is stated that issue nos. 4 and 9 are required to be recast. Besides that, they also prayed to frame 2 more issues. It is stated that plaintiff has claimed 1/8th share out of ½ share of Vasudev Patil and therefore issue regarding cancellation of sale deed, is to be re-framed to the extent of that ½ share. So far as issue no.9 is concern, it is regarding Will. Plaintiff has come before court alleging existence of Will and he has relied upon that Will. Therefore, burden is to be cast on the plaintiff to prove the Will. Last 2 issues which are to be added are, Whether plaintiff and defendant nos. 2 to 10 are entitled for 1/8th share and Does plaintiff prove that suit property has been purchased for the joint / undivided family.

2] Defendant no.3 filed his say at Exh. 128 and supported to recast issue no.4 and issue no.9. However, according to him, fresh 2 new issues as suggested by defendant, need not be framed.

3] Plaintiff filed his say at Exh. 126 and opposed to allow his application stating that application is illegal, no reason took placed to file this application. Therefore, prayed for rejection of application.

4] Heard learned advocate for both parties and gone through record. From perusal of issue no.4 and pleadings from the plaint, it appears that said issue is not properly worded. So far as issue no.9 is

concern, burden of Will is to be cast upon plaintiff since he has come before Court alleging existence of Will and he is relying on that Will. Therefore, I am going to re-frame issue nos. 4 and 9 as following by deleting earlier issue nos. 4 and 9.

ISSUE NO.4 : Does plaintiff prove that registered sale deed bearing Sr.No. 615/2006 dated 17/02/2006 executed by deceased Vasudev Nana Patil in favour of defendant nos. 1 & 2 is not binding on him to the extent of his 1/8th share in ½ share of Vasudev Patil in the said property ?

Alternatively

Whether plaintiff is entitled to the relief of cancellation of sale deed bearing No. 615/2006 executed by deceased Vasudev Patil in favour of defendant nos. 1 & 2 to the extent of the ½ share of Vasudev Patil ?

ISSUE NO.9 : Does plaintiff prove that Will dated 21/06/2007 is genuine and duly executed by the deceased Vasudev Patil ?

5] So far as last 2 issues suggested by the defendant is concern, already issue no.2 is framed regarding 1/8 share of the plaintiff and issue no.12 is also prayed regarding 1/8 share of defendant no.3. Once, Court comes to conclusion that, plaintiff is entitled for partition. In that case, Court has to declare shares of plaintiff as well as defendants and therefore it is not necessary to frame issue regarding share of remaining

defendants. So far as last issue is concern i.e. purchase of property for united family, same is also not required to be framed since in order arrive at findings regarding shares of the plaintiff and defendants, Court has to give findings regarding status of the property and therefore last 2 issues need not be framed. In result, I pass following order -

ORDER

- a] Application is partly allowed.
- b] Issue nos. 4 and 9 are deleted and fresh issue nos. 4 and 9 are framed as mentioned above.

Place :- Palghar.
Date :- 25/08/2025

Sd/-
(K. G. Sawant)
Jt. Civil Judge Senior Division,
Palghar.