

MHTH170015252015



REGULAR CIVIL SUIT NO.171/2015

Chandrakant Baburao Patil and anr.

vs.

Asif Iqbal Dhanani & ors.

ORDER BELOW EXH.272

By way of this application, defendant nos.1 to 5 have prayed to recast the issues framed at Exh.78. It is stated that, original plaintiffs have claimed ownership and possession over the suit property survey no.827/5 in plaint paragraph no.1. However, issue no.1 at Exh.78 is framed only with extent to possession over the suit property and not with regard to ownership.

2] Defendants by way of their counter claim claimed right of way through survey no.827/5. However, in issue nos.5 and 6 it is wrongly mentioned from survey no.827/8. Therefore, this application to recast issue.

3] Plaintiffs filed their say at Exh.273 and opposed to allow this application stating that application given for recast issues is unnecessary and there is no need to recast issue.

4] Heard, both sides and gone through record. So far as issue nos.5 and 6 are concerned, it appears that it should have been survey no.827/5 but, inadvertently it has been mentioned as survey no.827/8 and therefore, same needs to be corrected.

5] So far as issue regarding ownership is concerned, in a suit for injunction generally issue of ownership is not framed when there is no relief of declaration. If there is cloud on the title on plaintiff and he is seeking injunction claiming that he is owner in possession of suit property,

in that case, Court can frame issue of ownership if there is sufficient pleadings to that effect. In the case at hand, it is clearly stated by the plaintiffs that, they are the owner and lawful possessor of land from survey no.827/5 i.e. suit property and further stated that defendants are causing obstruction to their possession. Therefore, prayed for perpetual injunction. Defendants in their counter claim have sought negative declaration that original plaintiffs have no right of way from land from survey no.827/4 and further prayed that to not to disturb their possession over the land from survey nos.827/8 and 827/4. Thus, there appears to be no serious issue about the ownership of plaintiffs and if it is seriously disputed, then it is for plaintiffs to file the suit for declaration of ownership. When suit is only for injunction, and if it appears to Court that relief of injunction cannot be granted unless issue of ownership is decided, in such cases suit must fail. It is not the position that in every suit for simplicitor injunction issue of ownership is to be framed. In the case at hand also, I do not think it necessary to frame the issue of ownership. In result, I pass following order.

ORDER

- 1] Application is partly allowed.

- 2] In issue nos.5 and 6, survey no.827/8 be corrected as survey no.827/5.

Date : 13.03.2026
Palghar

(K. G. Sawant)
Civil Judge Senior Division,
Palghar.