

ORDER BELOW EXHIBIT - 128

1) Present application is filed by defendant No. 2 to 5 for recasting the following issues.

1. Whether the plaintiff has proved that defendant No. 1 & 2 were acting as manager in family and they were authorized by defendant No. 3, 4 & 5 to enter into agreement.

2. Whether the token received can said to be the document of agreement. Whether the plaintiff have proved that the token received is enforceable under law.

3. Whether the plaintiff proved that there is oral partition between defendant No. 1 to 6.

4. Whether the plaintiff is entitled to claimed alternate relief of damaged of Rs. 300 Lacks.

5. Whether defendant No. 1 & 2 have proved that by making false representation about the proposed acquisition of land for 15 m road and to clear the same the signatory were obtain some blank stand and papers.

6. Whether the defendant have proved token received forged document by taking the thumb mark of defendant No. 1 and signature of defendant No. 2

7. Whether plaintiff have proved that Prashant Ingale has confirmed had defendant No. 1 & 2 are entitled to enter into

agreement on behalf of entire family.

8. Whether plaintiff have procured the thumb mark and signature of defendant No. 1 & 2 fraudulently

9. Whether plaintiff have proved that defendant No. 1 & 2 can execute the token received on the behalf of other legal heirs.

10. Whether defendant No. 3 to 5 could be added as a party even though they are strangers to the token receipt.

11. What order and relief

2) It is asserted that suit is for specific performance of contract, alternately for damages, refund of earnest money and for grant of permanent injunction.

3) The defendant No. 2 to 5 have already submitted in their written statement that the suit filed by the plaintiffs is false, baseless and vexatious and it is liable to be dismissed. Hence, to find out the real controversy between the parties above noted issues needs to be framed. Defendant No. 2 to 5 have therefore filed the present application.

4) The plaintiffs have filed the say and strongly opposed the application. According to them issues are already framed long back. Now the matter is pending for the cross-examination of plaintiffs. The nature of issue mentioned in application are in cross form. Therefore, there is no need to recast the issues.

5) Perused the record and proceeding. Heard both the side. It is noted that in said matter issues already framed below Exh. 39 on 22.06.2016. Upon a careful consideration of the pleading of the parties in my view it is necessary to add some issues below Exh. 39. The pattern of the other issues mentioned in said application is according to their pleadings and it is not proper to frame the issues on every pleadings of the parties. Issues must be framed in ideal manner. Hence, some issues like proposed issue No. 4 & 11 in application are added in issues below Exh. 39. The evidence of the parties is yet to be completed. The issues framed below Exh. 39 are proper to adjudicate the matter. Both parties have opportunity to prove their case by adducing proper evidence. Hence, the said application is partly allowed. Only the issue No. 4 & 11 of said application are added in Exh. 39.

(Smt. S. V. Phulbandhe)

Date : 03/12/2021

Jt. Civil Judge (Sr. Division), Washim.

Certificate

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original Judgment/order.

Court Name : Jt. Civil Judge (S.D.), Washim,
Dist.Washim.

Date : 03.12.2021.

Order signed by the presiding officer on : 04.12.2021.

Order uploaded on : 04.12.2021.

Order uploaded by : Mahesh S Takwale
(Stenographer Grade-III.)