

Order below exhibit-52

Exhibit 52 is the application filed by defendant no.5 Ramesh raising objections about tenability of the suit and praying to frame preliminary issue in that regard.

2. The application is opposed by the plaintiffs by filing say exh.70.

3. Heard arguments and also considered written notes of arguments of the parties at exh.72 and 73.

4. The order passed by my learned predecessor on 26/03/2015 deciding preliminary issue based on applications exh.16 and 25 filed by the defendants and the plaint, was challenged by the defendant before the Hon'ble High Court, Nagpur Bench, in Civil Revision Application No.78/2015.

5. The Hon'ble High Court is pleased to pass following order while disposing of civil revision application on 28/09/2016 :

“5. In view of the above, the following order is passed :

- i) The defendant No.5 is permitted to withdraw the application (Exh.16).
- ii) The learned trial Judge shall frame the issue on the point raised by the defendant No.5 in the written statement regarding tenancy created in favour of the defendant No.5.
- iii) If the application is filed by any of the parties for deciding the concerned issue as preliminary issue, the trial Court shall pass appropriate orders on it according to law.”

6. In view of the above order of the Hon'ble High Court the defendant No.5 is expected to file written statement and then after framing issues, if the application should have been filed. But application exh.52 is filed on 16/12/2016 and the written statement at exh.68 is came

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on record after about nine months on 14/09/2017. The application is filed before framing issues. For these reasons the application is pre-mature and untenable. Hence :

Application exh.52 is rejected it being pre-mature and as such untenable.

Place : Darwha.

Date : 04/01/2018.

(S.P.Kekan)

Jt.Civil Judge Sr.Dn.