

MHYA210021962021



**ORDER BELOW EXH.01 IN REG.C.S.No.66/2021**  
**Samir Nathu Gatade+ 1 Vs. Damodhar Pandurang Gatade+ 1**

The plaintiffs made the present application for framing additional issues. Perused the application, reply Exh.29, and the record. Heard both the parties.

2. The plaintiffs have expressed the grievance that in view of issues framed at Exh.26 no burden is cast upon the defendants in view of their defence. Hence, they proposed five issues. The defendants contended that the framed issues are appropriate and prayed for rejection of application with costs.

3. The plaintiffs proposed the issues as to the purchase transaction by his father from Kalubai, the residence status of grandfather with the defendants, purchase of suit property by own money, the fact as to allotting the suit property on contract basis since 2006 to 2012 and the alleged fact of disposal of shared property of plaintiffs father and utilization of the sale proceeds for their own and relinquishment of share in the suit property by the father of plaintiffs.

4. As proposed by the plaintiffs, the negative burden cannot be cast on defendants vide proposed issue-A. I have gone through the pleadings and the proposed issues thoroughly. The plaintiffs come of with the case of ancestral property and claim the possession, by virtue of possession, claim the perpetual injunction and cancellation of alleged transfer dated 24.03.2004. The defence has been raised that the father of plaintiffs

disposed their share by making sale and in view of such disposal, he relinquished his share in the suit property. Therefore, no share remained of the plaintiffs in the suit property. By such disposal of share, the grandfather of plaintiffs and defendant no.2 bequeathed the suit property in the name of defendant no.2. Thereby, the defence claimed the nature of property to be separate property.

5. Considering the above rival contentions in the pleading and the proposed issues, in my opinion, there is no legal necessity to frame a issue against each disputed facts. The assessment of the existence of facts as to the transactions as alleged by the defence can be suffice in a single issue of nature of separate property. All the proposed issues, can be merge by framing issue as to the allege nature of property to be separate by the defence. Hence, in my opinion, one additional issue may suffice the purpose. Hence, I pass following order-

**ORDER**

1. Additional issue, that do defendant no.2 prove that the suit property is his separate property, be framed.
2. The issue Exh.26 be recast.
3. Application is disposed of, accordingly.

Place :Wani  
Date :21.12.2022

(Sudhir M. Bomidwar)  
Civil Judge (Jr.Dn.), Wani.

**Additional Issue Framed in view of application Exh.28 as follows,**

Do defendant no.2 prove that the suit property is his separate property.

Place :Wani  
Date :21.12.2022

(Sudhir M. Bomidwar)  
Civil Judge (Jr.Dn.), Wani.

**Re-cast issues**

1. Whether the plaintiffs prove that the suit property i.e. an agricultural land, bearing Gat no.29/1, area 1.07 H.R., situated at village Kurli, Tq.Wani, Distt.Yavatmal, is the ancestral property of the plaintiffs and defendants?
2. Whether the plaintiffs prove that the sale-deed dated 24.03.2004 is false, illegal and not binding on their shares ?
3. Do defendant no.2 prove that the suit property is his separate property ?
4. Are the plaintiffs entitled for  $\frac{1}{2}$  joint share in the suit property?
5. Are the plaintiffs entitled for partition of the suit property?
6. Are the plaintiffs entitled for perpetual injunction, as prayed ?
7. Are the plaintiffs entitled for declaration ?
8. What order and decree ?

Place :Wani  
Date :21.12.2022

(Sudhir M. Bomidwar)  
Civil Judge (Jr.Dn.), Wani.