

ORDER BELOW EXH.10

Seen the application and say. Perused record. Heard advocate for plaintiff. Since long application is pending for the argument of the defendant, but defendant has failed to argue the application. Today also when called defendant and advocate are absent. Hence, by treating application itself as the argument of defendant, same is taken up for orders.

2. By this application, defendant has requested for framing of preliminary issue as to whether deceased Nagabai can get share in view of Mutation No.2958. In this regard, it is the submission of defendant that, the property which was mutated in the name of deceased Nagabai was merely for maintenance purpose and therefore, after her death no right has remained in existence. Hence according to defendant, the preliminary issue about the share of deceased Nagabai needs to be framed.

3. Plaintiff while opposing the application has submitted that, unless parties get an opportunity to lead the evidence they would not be in position to prove their case and at this primary stage such a request would not be tenable. Hence, plaintiff has requested for rejection of application.

4. Before considering the merits of the application it must be mentioned that, the provisions of Sec.9-A of CPC which were specifically related to framing of preliminary issue are no more in

existence. Hence, framing of preliminary issue as contemplated u/s. 9-A is not considerable. It is also matter of record the framing of issues would be governed by provisions of O-14 of CPC. Under the said provision court is bound to pronounce the judgment on all the issues even if, case can be disposed off by deciding preliminary issue. In short, even if it is presumed that, the objection raised by defendant touches the very maintainability of the suit, still it would not be permissible to frame merely issue of maintainability without framing other issues and to decide the suit only by deciding one single issue. Considering all these facts as the application is without any merit, stands rejected.

Date:- 15.10.2024

(S. S. Jahagirdar)
Civil Judge Senior Division,
Solapur.

Certificate

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	- N. M. Shaikh
Court	- Civil Judge Sr.Dn., Solapur.
Date of Judgment/Order	- 15.10.2024
Judgment/Order signed by the	- 15.10.2024
Presiding Officer on	
Judgment/Order uploaded on	- 15.10.2024