

ORDER BELOW EXH NO.1

Perused the record. It appears that the suit has been filed for partition and separate possession of the suit lands situated at village Kasarwadi, Taluka – Parli Vajjnath & Dist - Beed. The dispute was referred to Lok-adalat which was held on 09.09.2023. Parties filed joint compromise memo at Exh No.17. However, the Head of the Panel prima facio found that there was relinquishment of right by some parties in compromise memo which violates Section 17 (1) (b) of the Registration Act and accordingly directed parties to argue before regular Court as to how the compromise is lawful vide order below Exh No.1.

2. Accordingly, I have heard ld. Advocates of both side. The ld. Advocates of both side are relied upon **Babu Vs. Giana, R.S.A. No.3542 of 2007 decided by the Hon'ble Panjab and Haryana High Court on 21.08.2009**. I have gone through it. In Para No.15, the Hon'ble Panjab and Haryana High Court observed that –

“ Giana, Surta, Taro and Parmali were the joint owners in joint possession of the land, in dispute. Giana, thus, had right and interest in every inch of joint land. If some of the co-sharers relinquished their right and title in the joint land, in favour of Giana, that did not amount to creating right in the immovable property, worth more than Rs.100/- in favour of Giana, for the first time. Even otherwise consent decree, does not

require registration in view of the provisions of Section 17(2)(vi) of the Registration Act.”

3. The above observations are appearing perfectly applicable to the case in hand. It is pertinent to note that as per Order 23 Rule 3 of C.P.C., the Court is duty bound to see whether the compromise is lawful or not before passing decree. Accordingly, I have gone through compromise memo and record.

4. It is noticed that **the Revenue and Forest Department of Maharashtra Government vide its Gazette Notification bearing Special No.283 dated 08.08.2023** has fixed area of 20 R land for *Jirayat* land and 10 R land for *Bagayat* land as **minimum standard area for Beed District** and below which fragmentation is prohibited.

5. As per Section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, no land in any local area shall be transferred or partitioned so as to create a fragment. Section 9 of the said Act declares that the transfer or partition of any land contrary to the provisions of this Act shall be void. In the case in hand, the compromise memo discloses that the plaintiff is going to get only 00 H 10.50 R land out of 00 H 42 R land in suit land bearing Gat No.253. The plaintiff and defendant No.3 are going to get only 00 H 12.66 R & 00 H 12.67 R respectively in Gat No.254. The 7/12 extract copies disclose that said lands are *Jirayat* in nature. It leads me to examine whether prima facie there

would be fragmentation by accepting the compromise memo ? which is prohibited under section 8 and void under section 9 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

6. Accordingly, I have perused the compromise memo carefully. It is noticed that though said compromise memo discloses that if partition is effected then prima facio there would be fragmentation, but it is pertinent to note that by way of acceptance of compromise memo, there would be only declaration of shares and not actual partition. Section 8AA(2) of the said Act prescribes separate procedure for effecting partition in such case. Hence, I am of opinion that the compromise is lawful and accordingly, I proceed to pass below order -

ORDER

1. The Compromise memo at Exh No.17 is accepted.
2. Suit is decreed in the terms of compromise memo at Exh No.17.
3. The compromise memo shall be part and parcel of the decree.
4. Decree be drawn up accordingly.
5. As per Section 89A (1) (a) of the Registration (Maharashtra Amendment) Act, 2010, the copy of decree and order together with memorandum describing the properties be send to the office of the Sub-Registrar having

jurisdiction over suit properties and said Sub-Registrar shall file the copy of the memorandum in his book No.1.

6. The decree shall be subject to the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

Sd/-

Date – 13.10.2023

(S.B.Ganapa)

Civil Judge Junior Division

Parli Vaijanath.