

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.9846 OF 2014

1. Latabai w/o Baburao Paitwar,
Age 52 years, Occu. Household,
R/o Kalalgalli, Nanded
 2. Baburao s/o Pandharinath Paitwar,
Age 60 years, Occu. Business,
R/o Kalalgalli, Nanded
- .. Petitioners
(Orig. Plaintiffs)

Versus

1. Prabhakar s/o Pandharinath
Paitwar, Age 49 years,
Occu. Private Service
 2. Vilas s/o Pandharinath Paitwar,
Age 44 years, Occu. Auto Driver
 3. Vikas s/o Pandharinath Paitwar,
Age 42 years, Occu. Private
Service,
All R/o Kalalgalli, Nanded
- .. Respondents
(Orig. Defendants)

Mr A.A. Mukhedkar, Advocate for petitioners
Mr Milind Patil (Beedkar), Advocate for respondents No.1 and 3

CORAM : N.W. SAMBRE, J.

DATE : 9th December 2015

PER COURT

Heard.

2. In Regular Civil Suit No.22 of 2010, for recovery of rent and possession of the tenanted premises, after the matter was posted for arguments, an application under Order XIV, Rule 5 of the Code of Civil Procedure came to be moved by the defendants seeking recasting of an issue in relation to proving the ownership of the suit property by

the plaintiffs which came to be allowed by order dated 22nd July 2014 passed below Exh.75 by the 2nd Joint Civil Judge, Senior Division, Nanded, as such present petition.

3. Mr Mukhedkar, learned Counsel for the petitioners – plaintiffs would urge that the recasting of issue is not permissible once the matter is posted for final hearing, as after casting of issues and recording of evidence, there is no provision to add or recast the issues in the matter. Second submission, according to him is that the petitioners are claiming ownership by virtue of gift deed and already issue to that effect as to whether there is valid gift deed by Pralhad Paitwar in favour of plaintiffs No.1 is framed and as such, at the fag end of trial the Court ought not to have gone into aspect of framing of issue that too in relation to title of the plaintiffs-petitioners.

4. In support thereof, learned Counsel for the petitioners has relied upon the judgment of this Court in the matter of **Pulmati Shyamlal Mishra and anr. Vs. Ramkrishna Gangaprasad Bajpai and ors.**, reported in **BCI (1981) 25**. He has invited attention of this Court to the observations made in paragraph 36 of the said judgment, which read thus:

“**36.** The Court has thus a duty to examine the substance and refuse to frame and remit any such issue if the same appears to be demonstrably frivolous and mala fide. It is obviously not easy to draw a dividing line between such frivolous and mala fide pleas on the one

hand and the ones turning out to be false at the end of the trial on the other. Facts of a given case, however, would rarely fail to furnish the required indication to the judicially trained mind. Facts of the present case, in our opinion, leave no manner of doubt that tenancy plea is a part of the fraudulent defence strategy and does not call for any remittance for trial. The approach could not have been different even if the Defendant No.5 had pleaded the tenancy specifically. The same picture would have emerged in the careful scrutiny at the preliminary stage contemplated under Order 14 of the Code of Civil Procedure.”

5. According to him, the petition is liable to be allowed with costs.
6. Mr Milind Patil, learned Counsel for the respondents No.1 and 3 – original defendants would urge that the application is rightly allowed by the learned trial Court in accordance with provisions of Order XIV Rule 5 of the Code of Civil Procedure and according to him, the plaintiffs were already on record qua the denial of title of plaintiffs in suit, as such the issue was rightly recast.
7. Having bestowed my anxious thoughts over the rival submissions of parties, it is worth to reproduce here the provisions of Rule 5 of Order XIV of the Code, which empowers the learned trial Court to recast the issue at any stage of suit before pronouncement of judgment. The said Rule reads thus :

“5. Power to amend and strike out, issues.- (1)

The Court may at anytime before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

8. In view thereof, the Court is empowered to re-frame and recast the issues at any stage of proceedings prior to delivering the judgment in the matter.

9. As such, the submission of learned Counsel for the petitioners that the stage at which the application for recasting of issue was moved and granted is not permissible/illegal, is liable to be rejected.

10. So far as the second submission of learned Counsel for the petitioner as regards framing of issue in relation to title, particularly when there is already issue framed as regards validity of gift deed in favour of plaintiffs, it is to be noted that the plaintiffs' title was denied by the defendants which has prompted the defendants to move such application. In my opinion, in the light of the pleadings which are already on record, the defendants have every right to ask for recasting of issue in view of above observations.

11. However, this Court cannot be a mute spectator to the delayed act on the part of respondents-defendants qua filing of application for recasting the issue. In my opinion, it will be appropriate to saddle costs on the defendants, which is quantified to Rs.5,000/- (Rs. Five thousand), to be deposited before the trial Court within a period of four weeks from today.

12. With these observations, Writ Petition stands dismissed.

(N.W. SAMBRE, J.)

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