

(1)

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

WRIT PETITION NO.11546 OF 2015

Jitendra Bitu Pawar & anr. ..PETITIONERS

VERSUS

Bitu Banda Pawar & ors. ..RESPONDENTS

Mr Dhananjay P. Deshpande, Advocate for petitioners

**CORAM : N.W. SAMBRE, J.
DATE : 30th November, 2015**

ORAL ORDER :

By the present petition, the petitioners-original plaintiffs, challenge the order dated 30th October, 2015, passed by Joint Civil Judge Junior Division, Tuljapur, below Exh.78, in Regular Civil Suit No.251 of 2009, whereby prayer of the respondents-original defendants for framing additional issues, came to be allowed, pursuant to the provisions of Order XIV, Rule 5 of the Code of Civil Procedure.

2. Mr Deshpande, learned Counsel appearing on behalf of the petitioners has made two-fold submissions; (a) the stage at which the application is allowed, is required to be appreciated by this Court, as according to him, the plaintiffs have already submitted written notes of arguments in the matter and (b) casting burden on the plaintiffs, particularly as regards proving an issue about the status of plaintiff no.2 as

(2)

legally wedded wife of defendant no.1, was not called for.

3. Having regard to the provisions of Order XIV, Rule 5 of the Code of Civil Procedure, in my opinion, the application for framing of additional issues, can be entertained at any stage of the suit. As such, the first submission of Mr Deshpande needs to be rejected and is accordingly rejected.

4. So far as the second submission, as regards casting burden on the petitioners-original plaintiffs, to prove, whether plaintiff no.2 is legally wedded wife of defendant no.1, particularly in the backdrop of defence raised by defendant no.1 is concerned, in my opinion, it will be appropriate for the present petitioners to take out proceedings in the civil suit for determining the burden for proving the said issue, as to whether on plaintiffs or defendants, which application if moved, is required to be decided by the Court of Joint Civil Judge Junjior Division, Tuljapur, in Regular Civil Suit No.259 of 2009, after giving appropriate opportunity to the parties.

5. In view of above observations, no substance could be noticed in the petition. Thus, the petition fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj