

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.W. NO.1816/2015 AND WRIT PETITION NO.6070/2012

1. Sarla w/o late Kamalkishore Laddha,
aged about 52 Yrs., Occu. Household work.
2. Sachin s/o Kamalkishore Laddha,
aged about 33 Yrs., Occu. Service.
3. Sandeep s/o Kamalkishore Laddha,
aged about 31 Yrs., Occu. Business.
4. Sandesh s/o Kamalkishore Laddha,
aged about 27 Yrs., Occu. Service.

All presently r/o Majiri Apartment,
Mangapura, New Mondha, Nanded,
Tq. and Distt. Nanded.

..Petitioners.

..Versus..

1. Shankar Tulshiram Wankhade,
aged about 55 Yrs., Occu. Cultivator
and Money Lender, r/o Pardi Asra,
Tq. Ansing and Distt. Washim.
2. Learned Civil Judge Sr. Dn.,
Washim.

..Respondents.

 Shri M.G. Sarda, Advocate for petitioners.
 Shri A.M. Ghare, Advocate for respondent no.1.

CORAM : Z.A. HAQ, J.

DATE : 29.9.2015

ORAL JUDGMENT

1. The prayer made on behalf of the petitioners for grant of early hearing of the

petition is granted, considering the facts of the case. The civil application is allowed.

2. Heard Shri M.G. Sarda, advocate for the petitioners and Shri A.M. Ghare, advocate for respondent no.1. Appearance on behalf of the respondent no.2 is dispensed with. Considering the nature of controversy, petition is taken up for final hearing.

3. The petitioners - original plaintiffs have filed this petition challenging the order passed by the trial Court rejecting the application (Exh. No.143) filed by them praying for recasting the issues. The learned trial Judge has refused to recast the issues on the ground that the issue of legal necessity cannot be raised by the plaintiffs at this stage of the suit and in the present form of the suit, and the issues in respect of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and in respect of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 cannot be decided by the Civil Court.

4. Shri Ghare, learned advocate for the respondent no.1 has submitted that the issues were framed by the trial Court on 18th February, 2003 and after the evidence has been recorded and the matter was fixed for arguments, the application came to be filed by the plaintiffs praying for recasting the issues. It is submitted that in these facts, the

prayer made on behalf of the petitioners need not be granted and the impugned order need not be interfered with.

Per contra, Shri Sarda, learned advocate has submitted that the provisions of Order 14 Rule 5 of the Civil Procedure Code enables the Court to recast the issues at any time before passing the decree and, therefore, it cannot be said that the issues cannot be recasted after the evidence is recorded. He further states that the plaintiffs will not be re-examining any witness if the issues are recasted.

5. After hearing the learned advocates for the respective parties and examining the documents placed on the record of the writ petition, I find that the plaintiffs have pleaded in the plaint that the sale deed dated 15th May, 1998 is hit by the provisions of the Ceiling Act and that because of the above referred sale deed the fragment would be created and, therefore, the sale was not permissible in view of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The plaintiffs have also pleaded in the plaint that the sale deed dated 15th May, 1998 was executed by deceased Kamalkishore Laddha as he had obtained loan for immoral purposes and, there was no legal necessity to sell the property.

6. In view of the specific pleadings of the plaintiffs, in my view, the issues should have been framed by the trial Court. Considering the provisions of Order 14 Rule 5 of

the Code of Civil Procedure, I find that the Court is not prevented from recasting the issues, even after the recording of the evidence. The trial Court has failed to exercise the jurisdiction vested in it by not recasting the issues though the issues are required to be framed.

7. Hence, the following order :

- (i) The impugned order is set aside.
- (ii) The application (Exh. No.143) filed by the petitioner is allowed.
- (iii) The trial Court is directed to recast the issues accordingly.
- (iv) Rule is made absolute in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.