

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO.9629 OF 2015

TUKARAM SAKHARAMJI BHALERAO
VERSUS
PRALHADRAO SAKHARAMJI BHALERAO AND OTHERS

Advocate for Petitioner : Mr. Gaikwad Anil M.

CORAM : P.R.BORA, J.

DATE : 14th January, 2016.

PER COURT :

1) Heard learned Counsel for the petitioner. The petitioner is defendant in Regular Civil Suit No.117/2014 pending in the court of Joint Civil Judge, Senior Division, at Parbhani. The petitioner had filed an application at Exhibit-27 before the trial Court praying for framing of two additional issues and for modification of Issue No.8. The said application has been rejected by the Trial Court. Aggrieved by the said order, the present petition is filed.

2) Perused the impugned order and the issues framed by the Trial Court. On perusal of the application filed at Exhibit-37 by the petitioner, it

reveals that the petitioner was praying for framing of the following two additional issues, -

"(1) Whether there there was family arrangement in the family of plaintiff and defendant no.1 in the year 2003?

(2) Does defendant No.1 prove in the family arrangement of 2003 suit property was allotted to him.?

3) The Trial Court has framed the following issues, -

"1. Does plaintiff prove that, oral partition was took place in the year 2003, in between plaintiff and defendant No.1? and suit house property was allotted to the share of the plaintiff?

2. Does plaintiff prove that, he is a owner of house property bearing No.4, situated in Ward No.13, Parbhani admeasuring 402.6 s q. meter, as alleged?

3. Does plaintiff prove that possession of the defendant No.1 over three rooms, toilet, bathroom from defendant No.1 and one shutter from defendant Nos. 2 & 3 each and first floor from defendant No.4, is illegal, as alleged?

4. Is plaintiff entitled for decree of declaration, as claimed?

5. Is plaintiff entitled for decree of possession as claimed?

6. Is plaintiff entitled for damages? if yes, up to what extent?

7. Whether plaintiff is entitled for

decree of perpetual injunction, as claimed?

8. Whether suit is properly valued and proper court fees has been paid by the plaintiff?"

4) Respondent/plaintiff has filed the suit seeking declaration that he is the owner of house bearing No.4, situated in Ward No.13 within the area of Municipal Corporation of Parbhani and consequently has sought possession of some portion of the said property, as described in the suit plaint stated to be in possession of defendant No.1, i.e. present petitioner. It is the case of the respondent/plaintiff that oral partition had taken place in the year 2003 between himself and petitioner/defendant No.1, wherein the suit property was allotted to the plaintiff's share. It is the contention of the petitioner/defendant No.1 that in the family arrangement arrived at between himself and plaintiff/Respondent No.1, the house property was allotted to petitioner/defendant No.1's share.

5) Having regard to the pleadings of the parties as aforesaid, the onus is on the plaintiff/Respondent No.1 to prove that there had

been oral partition between him and petitioner/defendant No.1, wherein the suit house was allotted to his share. The Trial Court has, therefore, rightly framed Issue No.1. In view of the Issue so framed, it was not at all necessary to frame the two additional issues as proposed by petitioner/defendant no.1. The Trial Court has rightly rejected the request of the petitioner/defendant No.1 to frame such issues.

6) Secondly, the petitioner/defendant No.1 had proposed modification in issue No.8, as under, -

"Whether suit is liable to be rejected it being under valued and for want of proper court fee"?

The modification so proposed also appears to be unnecessary and unwarranted. The issue already framed as "Whether suit is properly valued and proper court fees has been paid by the plaintiff?" sufficiently covers and takes care of the objection raised by the petitioner/defendant No.1. The Writ Petition is thus devoid of any substance. Hence, following order.

ORDER

The Writ Petition is rejected.

(P.R.BORA, J.)

bdv/