

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

WRIT PETITION NO. 6437 OF 2013

Gamesh Pandurang Salve and Others

..PETITIONERS

VERSUS

Jyoti Ramesh Mirkar and Others

..RESPONDENTS

....

Mr. V.P. Latange, Advocate for petitioners.

Mr. S.C. Bhosale, Advocate for Respondent Nos. 1 to 5.

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CORAM : T.V. NALAWADE, J.

DATED : 01st DECEMBER, 2016

ORDER :

1. Heard learned Counsel for both sides. Learned Counsel for petitioner submitted that in view of deletion of prayer of declaration, the prayer was made to delete the issues which were framed for the relief of declaration and so the Trial Court ought to have allowed Exhibit 167 and ought to have deleted those issues. He submitted that he did not want to prosecute the claim of declaration and so there was no need to lead the evidence on relief of declaration and so there was no room to keep issues on record.

2. Other side opposed to it. When admittedly plaintiff is not claiming relief of declaration and issues with regard to relief of declaration are framed, the Trial Court ought to have delete those issues. Only because of pleading for those issues is remaining in the body that does not mean that the relief is claimed

3. So, the petition is allowed. Order made by Civil Judge Senior Division, Aurangabad on Exhibit 167 in Special Civil Suit No. 234 of 2006 is hereby set aside. Exhibit 167 is allowed. The said issues stand deleted.

(T.V. NALAWADE, J.)

SSD