

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 9402 OF 2016

PUSHPABAI VITTHALRAO YADAV AND OTHERS

VERSUS

RUKHMINBAI VITHALRAO YADAV AND OTHERS

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Advocate for Petitioners : Kedar Balbhim R.

Caveat Filed By Adv Swapnil S Rathil For R-1 To 4

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CORAM : T.V. NALAWADE, J.

DATE : 16-09-2016.

ORDER :

1. The application is filed by defendant of suit no. 52/2008 which is pending before the court of Civil Judge Senior Division, Parbhani. The present petitioner, the defendant had filed application at exhibit-435 and had prayed for re-casting of the issues framed by the court. Heard both the sides.

2. The submissions made show that the matter is at the flag end, it is kept for final arguments. Fortunately matter has come to this court as early as possible.

3. After hearing both the sides and after going through the issues already framed and also the pleading of both the sides, this court has no hesitation to deserve that all necessary issues are already framed. It can be said that, one proposed issue can be addressed while answering issue no.10A. The contention of the defendant that, one property is sold by defendant no.4 and that property is not included in the suit can be address in accordance

with the provisions of Civil Procedure Code in the judgment itself. It is admitted that defendant no. 1 has not taken steps to see that the said property is also included when she had such right. The other point which can be considered is only the right of the plaintiff to say they are exempted from payment of court fees as they are ladies. This point needs to be addressed by the trial court. With these observations this court holds that there is no need to interfere in the order made by the trial court.

4. The learned counsel for the petitioners submitted that, additional issue needs to be framed to cast burden on plaintiff showing that she is required to prove that defendants no. 2 and 3 are illegitimate son of Vitthal. Issue no.1 covers everything as soon as plaintiff no.1 proves that she is the legally wedded wife of Vitthal, then her issues became legitimate issues and the issues of defendant no.1 become illegitimate issue. Both the sides are allowed to inform to the counsels on telephone or on fax the aforesaid order. In those terms petition is disposed of as dismissed.

(T.V. NALAWADE)
JUDGE