

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7659 OF 2013

1. Balaji S/o Bhujaji Bokare,
Age-45 years, Occu-Agriculturist,

2. Baban S/o Balaji Bokare,
Age-25 years, Occu-Agriculturist,

3. Mohan S/o Balaji Bokare,
Age-23 years, Occu-Agriculturist,
All R/o Someshwar, Tq. and Dist. Nanded

PETITIONERS

VERSUS

Shobha W/o Baburao Dak,
Age-40 years, Occu-Household,
R/o Pimpalgaon (Nimji), Tal.Nanded,
Dist. Nanded

RESPONDENT

Mr.G.P.Shinde, Advocate for the petitioners.
Mr.G.D.Kale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/02/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are original defendants in RCS No.177/2012 (Old No.Spl.C.S.187/2008) and are aggrieved by the order dated 13/08/2013 delivered by the Trial Court below Exh.70 by which the

issues have been recast.

3. Grievance is that the respondent who is the original plaintiff and is the sister of the petitioner, had filed the suit seeking partition and separate possession. Issues were cast in 2009. Oral and documentary evidence was recorded and the litigating sides filed evidence closing purshis. Prior to hearing the parties finally and delivering of the judgment, the plaintiff filed application Exh.70 and prayed for recasting of the issues. The Trial Court invoked Order 14 Rule 5 of the CPC and allowed application Exh.70 vide the impugned order dated 13/08/2013 and recast the issues on the same date.

4. The petitioners submit that though Order 14 Rule 5 may enable recasting of issues or framing of additional issues, it could not be ordinarily done when the matter was posted for advancing final arguments. Strong reasons have to be assigned for the applicant and in rarest of rare cases, the Trial Court could recast the issues.

5. Learned Advocate further submits that the application Exh.70 does not in any way put forth any reasons for, much less justify, the recasting of the issues. The plaintiff merely suggested 9 issues and the Trial Court has accepted the draft issues below paragraph No.4 of

Exh.70 and has mechanically recast the issues.

6. He further submits that after recasting of the issues, liberty to lead additional oral and documentary evidence to the petitioners / defendants especially on the recast issue Nos. 2, 3 and 4 does not appear to have been granted by the Trial Court. He, therefore, prays that the impugned order be quashed and set aside.

7. Learned Advocate for the sole respondent/plaintiff submits that as the suit is for partition and separate possession, all the properties in between the litigating sides will have to be considered for arriving at a just decision. After the plaintiff realizes that material issues were not cast, she preferred Exh.70 before it became too late. The Trial Court has assigned reasons for allowing the said application which can neither be termed as being perverse nor erroneous.

8. He further submits that both the litigating sides can be granted the liberty to lead additional oral and documentary evidence considering the recasting of the issues.

9. I have considered the submissions of the learned Advocates.

10. Order 14 Rule 5 of the CPC reads as under :-

“Power to amend and strike out issues : (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

11. It is trite law that though recasting of issues or framing of an additional issue can be done at any stage in the suit, this exercise at the stage of advancing final oral submissions could be done in exceptional circumstances. So also, if the issues are recast or if there is an addition of issue, the parties will have to be given the opportunity to lead further oral and documentary evidence.

12. I have considered the issues which have been recast. Issue Nos. 2, 3 and 4 have been framed in addition to the earlier issues. Original issue Nos. 2 and 4 have been dropped. I do not find that the addition of 3 issues at Sr.Nos. 2, 3 and 4 can be said to be perverse or erroneous or likely to cause grave injustice to the

petitioner. Nevertheless, the litigating sides deserve to be allowed to lead further oral and documentary evidence.

13. As such, this petition is partly allowed.

14. Without causing an interference in the impugned order, the petitioners as well as the respondent are permitted to lead further oral and documentary evidence in addition to the evidence already on record. The Trial Court shall consider the earlier evidence and the fresh evidence adduced and shall decide the suit on its own merits.

15. Rule is made partly absolute in terms of the above directions.

(RAVINDRA V. GHUGE, J.)