

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 11334 OF 2014

DNYANESHWAR BHIKAJI KADU
VERSUS
BABASAHEB BHIKAJI KADU AND OTHERS

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Advocate for Petitioner : Mr. P. S. Pawar
Advocate for Respondent Nos. 1 and 5 : Mr. V. D. Sapkal
Advocate for Respondent Nos. 3 and 4 : Mr. A. L. Barhate

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CORAM : V. K. JADHAV, J.

DATED : 12th FEBRUARY, 2016

PER COURT :-

1. The petitioner-original plaintiff has instituted a suit bearing Regular Civil Suit No. 354 of 2005 for partition and separate possession. Respondent No.1-original defendant has strongly resisted the claim of petitioner-plaintiff by filing written statement. The trial court has framed issues below Exh.58. The petitioner-plaintiff's evidence is completed and thereafter, respondent No.1-original defendant has filed his affidavit of examination-in-chief and evidence of respondent No.1 is also completed on 10.09.2012. Respondent No.1-original defendant, after the matter was closed for final arguments, filed an application Exh.201 for framing of additional issues. Petitioner-plaintiff has strongly resisted the said application by filing say. The trial court, by impugned order dated 04.10.2014,

allowed the said application and accordingly framed additional issues as detailed in the application Exh.201. Hence this writ petition.

2. Learned counsel for petitioner-plaintiff submits that respondent No.1-defendant has filed the said application Exh.201 at a belated stage. Learned counsel further submits that respondent No.1-defendant has admitted during the course of his cross-examination that he has no evidence showing certain property as his self acquired property. Learned counsel submits that in order to fill up the said lacuna, respondent-defendant No.1 has filed application Exh.201. Learned counsel further submits that issue No.1 at Exh.58 framed earlier, covers the entire controversy, and therefore, there is no need to frame the proposed issue Nos. 3 and 4 as per application Exh.201. Learned counsel submits that the order impugned is erroneous and thus, liable to be quashed and set aside.

3. Learned counsel appearing for respondent Nos.1 and 5-original defendants submits that even though there is a pleading, the issues were not framed as detailed in the application Exh.201. Learned counsel submits that Court can frame additional issues and allow the parties to lead evidence thereon even after commencement of arguments. Learned counsel submits that for framing additional issues as per pleadings, it is not necessary to go into the merits. Learned counsel submits that it is important to frame an issue in the

light of pleadings of the parties to the suit and that can be done even at the commencement of arguments. Learned counsel, in order to substantiate his contention, places reliance on the decisions in the following three cases :

1. Kishorelal Gupta vs. Devilal Kalwar alias Gowalla, reported in AIR 1971 ORISSA 191 (V.58 C55),
 2. Yatendra Nath Gupta vs. Jagdish Chander Sharma and others, reported in AIR 2003 DELHI 267 and
 3. Bhagwan and others vs. Sachi Chandra Jain and others, reported in AIR 1992 MP 258
4. Learned counsel submits that trial court has rightly allowed the application Exh.201 and further granted liberty to the parties to lead additional evidence, if required. Learned counsel submits that the impugned order, thus, calls for no interference, the writ petition is devoid of any merits and the same is liable to be dismissed with costs.
5. There is no dispute that there is a pleading to that effect in the written statement submitted by respondent No.1-original defendant. I do not think that issue No.1 framed at Exh.58 covers the point raised by respondent-original defendant by way of his pleadings. In the interest of justice and for just disposal of the suit, Court can frame

issues at any stage of the suit and allow the parties to lead evidence thereon. I do not find any fault in the order impugned. Learned Judge of the trial court has rightly allowed application Exh.201 and further granted liberty to the parties to lead additional evidence, if required. The writ petition is devoid of any merits and the same is hereby dismissed with liberty to the petitioner-plaintiff to file application before the trial court for expeditious hearing of the suit. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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