

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

WRIT PETITION NO. 11718 OF 2015

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LAXIMIBAI MANIKRAO CHATTE (DESHMUKH) AND
ANOTHER
VERSUS
BAPURAO AABASAHEB CHATTE (DESHMUKH) AND
OTHERS

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Advocate for Petitioners : Mr V B Dhage
Advocate for Respondents : Mr. M P Kale

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CORAM : V.K. JADHAV, J.
Dated: February 16, 2016

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PER COURT :-

1. The respondents/plaintiffs have instituted a suit bearing Regular Civil Suit No.89 of 2011 for declaration of title and decree of perpetual injunction against the petitioners/original defendants. The petitioners/defendants filed an application Exh.78 for framing of the additional issues as detailed in the application. The learned Civil Judge Senior Division, Basmathnagar, by impugned order dated 13.10.2015 passed below Exh.78 in RCS No.89/2011 rejected the said application by imposing costs on the petitioners/defendants. Hence, this writ petition.

2. Learned counsel for the petitioners submits that, as per the pleadings of respondents/plaintiffs, additional issues as detailed in the application Exh.78 are required to be

framed. Learned counsel submits that, the Trial Court has erroneously rejected the application at Exh.78. Learned counsel further submits that, petitioners/defendants have denied that deceased Prayagbai bequeathed all the properties of Manikrao in favour of respondent/plaintiff no.4 by executing will dated 21.2.2003. Furthermore, petitioners have also denied in the written statement that respondents/plaintiffs are the legal heirs of deceased Manikrao. Learned counsel lastly submits that in the light of the said pleadings, additional issues are required to be framed.

3. It appears that, the proposed issues are in respect of the property of deceased Prayagbai which is not the subject matter of the suit. It is further a part of record that, issue in respect of the execution of the will of Prayagbai is pending for decision in another suit bearing RCS No.200/2010 which is pending. Learned counsel submits that, said suit also came to be dismissed in default.

4. The learned Judge of the trial court has observed that on 8.8.2014 respondents/plaintiffs closed their evidence by submitting pursis at exh.54. Then, after seeking adjournment thrice, petitioners/defendants started their

evidence and, after examining only one witness, petitioners/defendants sought many adjournments and then applied for issuance of summons to the witness. Even witness of the petitioners/defendants did not appear in response to the service of summons, bailable warrant came to be issued against the witness. Even though bailable warrant was served on the witness, witness did not turn up. Trial court further recorded in paragraph no.16 of the impugned order that, petitioners/defendants sought many adjournments for taking steps and for adducing further evidence. Thus, by order dated 11.9.2015 passed below exh.1 further evidence of petitioners/defendants was closed and matter was posted for final arguments on 19.9.2015. Even on that day, plaintiff's side was heard, however, matter was adjourned at the request of the petitioners/defendants. Trial Court has observed that, even though issues are framed on 17.12.2012, the petitioners/defendants never bothered to file an application for framing of additional issues. Even trial court has observed in paragraph no.18 of the impugned order that, only when the matter was posted for final arguments, this application Exh.78 came to be moved with some ulterior motive. I do not find any fault in the order impugned in this writ petition. Trial Court has rightly rejected the application at Exh.78. Impugned order, thus,

calls for no interference. Writ petition is liable to be dismissed.

5. In the result, Writ Petition is hereby dismissed. No order as to costs.

(V.K. JADHAV, J.)

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aaa/-