

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 7179 OF 2015

Smt.Shobha Annasaheb Patil & anr.

.. Petitioners

Vs.

Shri Raju @ Rajgonda Devgonda
Patil & ors.

.. Respondents

Mr.Umesh Mankapure, for Petitioners.

None for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Wednesday, 24 August 2016.***

P.C. :

Heard learned counsel for Petitioners challenging the order dated 23 January 2015, rejecting the application filed by the Petitioners for framing an additional issue.

2. The learned Civil Judge, by the impugned order, has opined that additional issue cannot be framed and the Petitioners will have to file a counter claim. The learned counsel for Petitioners sought to contend that since the suit is for partition, it is not necessary to file a counter claim and the Petitioners can always bring the property into a common hotchpotch and seeks shares as per law. If the plaint is perused prima facie it appears that the Respondent-Plaintiff has not brought the suit solely on the basis that the properties are joint family

properties and they are required to be partitioned. It is the defence of the Petitioners that the properties are joint family properties. Therefore, at this stage, one cannot proceed on the basis that it is an admitted position that the properties are joint family properties. However, if the Petitioners are able to prove at the time of trial that the properties are joint family properties then it would not be a ground to drive them to file a counter claim and pay the court fees. Therefore, the question which is sought to be raised by the Petitioners is kept open to be considered at the time of trial. With this clarification, the Writ petition is disposed of.

(N.M.Jamdar, J.)