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

*WRIT PETITION NO. 11154 OF 2014
with
WRIT PETITION NO. 11155 OF 2014*

Mr. Lala Sakharam Khairnar & Ors. ... Petitioners.

V/s.

Mr. Madhukar Maruti Khairnar & Anr. ... Respondents.

Mr. Sanjeev Sawant a/w. B.K. Barve and Santosh Wagh i/b. B.K. Barve & Co. for the Petitioners in both Petitions.

Mr. Manoj Kadam for Respondents 1 in both Petitions.

CORAM : N.M. Jamdar, J.

25 August, 2016.

P.C. :-

The Petitioners challenge the order passed by the learned Civil Judge, Junior Division, Sinnar below Exhibit 155 in Regular Civil Suit No. 279 of 2001 rejecting an application for framing of additional issues. The Respondents have filed a suit seeking a decree of injunction against the Petitioners – Defendants.

2. The Petitioners moved an application on 25 March 2011 seeking to frame an additional issue as to whether the Respondents had proved that under the Scheme framed under the Maharashtra

Prevention of Fragmentation and Consolidation of Holdings Act whether the land specified were shown in excess in favour of the Respondents – Plaintiffs. The learned Judge has not granted the said prayer on the ground that such issue is not necessary and the application is moved at a belated stage, when the the suit is of the year 2001.

3. The order passed is purely interlocutory. Because an additional issue is not framed, the Petitioners are not foreclosed from leading evidence in respect of the contentions raised in the written statement and arguing the contentions as may be available in law and fact. The learned Judge was also right in taking into consideration the fact that the suit is of the year 2001. Once it is open to the Petitioners to lead evidence and argue in furtherance of the contentions raised in the written statement, the Petitioners are not prejudiced by not framing a issue.

4. In view of this position, after such evidence is led by the parties, the learned Judge can, if so warranted, pass appropriate orders as regard jurisdiction, etc. It is therefore not necessary to interfere with the impugned order. The Writ Petitions are accordingly disposed of by keeping all contentions of the parties open. The learned Trial Court will consider disposing of the suit at an early date, keeping in mind that the suit is of the year 2001.

(N.M. Jamdar, J.)