

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12548 OF 2016

BANSILAL JETHMAL MANTRI
VERSUS
PRASHANT MOHANLAL AGRAWAL AND ANOTHER

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Advocate for Petitioner : Shri Kalani Pravin N.
Advocate for Respondent 1 : Shri Gamot Praveen B.
Advocate for Respondent 2 : Shri Sabnis Ameya N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 22.7.2016, by which, application Exhibit 81, filed by the petitioner / defendant No.2, praying for recasting of issues has been rejected.

2. I have considered the strenuous submissions of Shri Kalani, Shri Sabnis and Shri Gamot, learned Advocates for the respective sides. With their assistance, I have gone through the plaint, written statement, the issues framed and application Exhibit 81.

3. It is trite law that issues have to be cast after considering the pleadings of the respective sides and the documents placed

on record. Issues pertaining to legal submissions and arguments cannot find place in the issues cast by the Court.

4. Defendant No.2 submits that the issues were cast on 25.1.2011. Application Exhibit 81 seeking recasting of issues was filed on 2.4.2016 after about 5 years.

5. I find that the defendant No.2 has specifically stated in paragraph No.3 of his Written Statement that the suit is untenable since there is a mis-joinder of necessary parties. Details in support of the contention are found in the body of the Written Statement. In my view, the trial Court should have framed the said issue, which is at paragraph No.2A of Exhibit 89.

6. In so far as the proposed issues at 2B and 2E are concerned, the same would be an intricate issue with regard to the contentions of the parties and would be a matter of arguments. These two proposed issues are not required to be cast. Proposed issues at 2C, 2D and 2F, in my view are covered by issue No.1, which is framed below Exhibit 54. No additional issue is, therefore, required to be cast.

7. Considering the above, this petition is partly allowed. The

impugned order dated 22.7.2016 is sustained only to the extent of the proposed issues 2B and 2F and the said issues need not be cast. However, the impugned order is modified and application Exhibit 81 is allowed only to the extent of adding the issue as under:-

“ Whether the suit suffers from mis-joinder of necessary parties? ”

8. The above said issue shall be added as issue No.10.

(RAVINDRA V. GHUGE, J.)

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akl/d