

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7497 OF 2015***

Sushila Vishwanath Chiwate & Anr.	...Petitioners
Versus	
Shri Suhas Mahaling Chiwate & Ors.	...Respondents

Mr.Dilip B. Shinde, for the petitioners.
Mr.Bhushan Walimbe,for the respondent Nos. 1 to 11.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 7th December, 2017.***

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The petitioner No.1 herein happens to be the original plaintiff in old Civil Suit No.27 of 2006 which is renumbered as Regular Civil Suit No.54 of 2012. The suit was filed by the widow of deceased Vishwanath Gangaram Chiwate seeking partition and possession of the property of her husband. It is the case of the plaintiff that during his lifetime, her husband had gifted her 5 Aane & 4 Pie share. The couple had no issue born out of the said wedlock. That in the year 2006, she filed a suit seeking partition

and possession. The defendants appeared in the said suit and filed their reply. It was the case of the defendant No.1 that the suit property is not properly described. It was further contended that the defendants had purchased the land from the wife of the brother of the plaintiff by virtue of a sale deed and that they are put into possession from the date of the sale deed. The learned Court, upon considering the contentions raised in the plaint as well as the written statement, had framed the issues on 5.12.2008. Thereafter, the learned Court had recast the issues on 5.12.2014 and the learned Court had deleted the issues in respect of the contentions raised as to whether Vishwanath Chiwate had executed a Will deed in favour of Vishwas Shetye. Secondly, as to whether the legal heirs of Vishwas Shetye would be entitled to ownership and possession on the basis of the Will deed executed in favour of their father. Thirdly, as to whether the sale deed executed in favour of the defendants by the wife of the brother of the plaintiff was valid. The plaintiff had objected to deleting issues Nos. 4, 5, 6 and 7 and had contended that they were necessary issues. The final issues were framed on 9.12.2014. The plaintiffs had filed an application objecting to the issues which were recast. The application was numbered as Exhibit 201. The learned Court has rightly held that the necessary issues have been

framed on the basis of the contentions raised by the respective parties. The burden is cast upon the plaintiff to prove her case. She cannot take benefit of the contentions raised by the defendants. The learned Court by an order dated 9.12.2014 is pleased to reject the said application below Exhibit 201.

3. The learned counsel for the petitioners submits that it was incumbent upon the Court to frame an issue as to whether the plaintiff has proved the sale deed in favour of the defendant by the wife of the brother of the plaintiff.

4. The learned counsel for the respondent submits that the defendant has not raised any counter-claim and therefore, the said issue would not be necessary. It is the case of the plaintiff that she happens to be the legally wedded wife of Vishwanath Chiwate which was converted by the defendant and therefore an issue is framed as to whether the plaintiff proves that she is the legally wedded wife of Vishwanath Chiwate and she is entitled to partition and declaration of ownership. The findings recorded by the learned Court do not call for any interference.

5. In the course of the trial also it would be open to the Court to frame issues on the basis of the evidence i.e. evidence adduced by the respective parties as contemplated under Order XIV Rules 3 and 5 of C.P.C. The

Petition being sans merits, stands dismissed. However, the learned Court shall be at liberty to frame additional and necessary issues in accordance with law if it is found necessary to do so in the course of the trial. The Petition is dismissed. Rule is discharged.

6. It is needless to say that the interim relief granted vide order dated 17.8.2015 stands vacated.

(SMT. SADHANA S.JADHAV, J.)