

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4570 OF 2016***

Shri Ashok Ramchandra Palekar & Ors.

.... Petitioners

Versus

Shri Raghunath Keshav Palekar & Ors.

...Respondents

Mr. Girish R. Agrawal, for the Petitioners.

Mr. Vaibhav R. Gaikwad a/w Mr. Tushar Khairnar, for the Respondent Nos.
1 to 4.

***CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 14th November, 2017.***

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The petitioner herein, being aggrieved by the order dated 6.8.2013, has filed the present Writ Petition. The petitioners happens to be the original defendants in Special Civil Suit No.1 of 2013 pending before the Court of Civil Judge, Senior Division at Karad. That the petitioners had filed an application under Section 9A of the Code of Civil Procedure raising an objection that a preliminary issue should be framed as to whether this Court has jurisdiction to try the suit. The suit is filed for partition and

separate possession and also claiming Rs.5,50,000/- which, according to the plaintiff, he has spent on the development of the said agricultural land. The plaintiff has paid the Court fees according to the claim i.e. Rs.15,100/-. It was the claim of the petitioners that the plaintiff has not filed documents to substantiate his claim of Rs.5,50,000/- which, according to him, he has spent for development of the agricultural land. The petitioners/defendants had specifically claimed that the plaintiff/respondent has not spent a single penny for the development of the said land. It was the contention of the defendant that specific issue in respect of jurisdiction should be framed. The learned Civil Judge, Senior Division, Karad by an order dated 6.8.2013 has rejected the application by observing that the issue as to whether the plaintiff has spent Rs.5,50,000/- in the development of the land or he is entitled to claim the same, happens to be a matter of evidence which the plaintiff shall substantiate either by documents or by adducing evidence and the same cannot be considered under Section 9A of the C.P.C. It is apparent from the contents of the order that the learned Civil Judge, Senior Division, Karad at the time of framing of issue would frame an issue as to whether the plaintiff has proved that he has spent Rs.5,50,000/- for the development of the said land and whether he is entitled to recover the same from the

defendant. The learned Court has rightly observed that in the circumstances, there is no question of ouster of jurisdiction because a false claim is made. It is in view of this, that the impugned order dated 6.8.2013 does not call for any interference at this stage and this Court is satisfied that the Civil Judge, Senior Division, Karad would frame appropriate issues in the said suit. The Petition stands disposed of. Rule is discharged.

(SMT. SADHANA S.JADHAV,J.)