

Mr. Rajaram P. Lote for Petitioners.
Mr. Sandesh Patil a/w. Mr. S. S. Wadekar for Respondents.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.1 to 6', have challenged the judgment and order dated 02.08.2016 passed by the learned 5th Joint Civil Judge, Junior Division, Kalyan below exhibit-87 in Regular Civil Suit No.164 of 2002. By that order, the learned trial Judge partly allowed the application filed by the defendant No.3 under Order XIV, Rule 5 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for recasting / framing additional issues.

1. Do plaintiffs prove they are the absolute owner of land survey No.13, H 5 (New S. No.2 Hissa 5) admeasuring 21.2 g/hector Asde Golvali &
2. Do they prove that, defendants encroached on 600 sq.ft. area of suit field towards western side and made construction thereon &
3. Whether the suit is properly valued &
4. Do the Def No.3 to prove that they became the

absolute owner of suit property by virtue of adverse possession &

5. Is the plaintiff entitled for relief sought &
6. What order and decree?"

4. Defendant No.3 filed application exhibit-87 inter alia praying for framing / re-casting following issues:

- “
- (i) Do the plaintiffs prove that the suit is within limitation period.
 - (ii) Is the Suit maintainable in the absence of the preliminary / basic reliefs as also the consequential reliefs?
 - (iii) Is the Suit maintainable in the absence of the compliance of Order 7, Rule 3 and the Bombay Amendment under Order 7, Rule 3 of the Code of Civil Procedure?
- b) The issue No.4 to the effect that “do the defendant No.3 prove that they became the absolute owner of the suit property by virtue of adverse possession” may be deleted in the interest of justice.”

5. Defendant No.3 further prayed for deleting issue No.4 extracted hereinabove.

6. Mr. Lote submitted that perusal of the description given in the plaint clearly shows that description given by the plaintiffs is not in compliance of the requirements laid down under Order VII, Rule 3 of C.P.C. As the plaintiffs have not given description of the suit property, it is not capable of being identifiable. He has taken me through the impugned order and submitted that the learned trial Judge ought to have framed the issues as proposed by defendants No.1 to 6.

7. On the other hand, Mr. Patil supported the impugned order.

8. Perusal of paragraph 3 of the order shows that the learned trial Judge has dealt with the objections raised by defendants No.1 to 6 based on Order VI, Rule 3 of C.P.C. The learned trial Judge observed that in paragraph 2 of the plaint, plaintiffs have given specific identification of

the suit property along with T.I.L.R. map in R.D. No.16 of 2000 on which they are relying to show the alleged encroachment by the defendants. The learned trial Judge was, therefore, of the view that when the said encroachment was specifically brought before the Court by the said map, it cannot be said that the suit property is not capable of being identifiable. In fact, the learned trial Judge has partly allowed the application by framing additional issue as to whether the Suit is within limitation. The learned trial Judge has also deleted issued No.4 as proposed by the defendant No.3. For the reasons recorded in paragraphs 3 to 5 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Minal Parab