

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11855 OF 2018

**HABIB ALVI HABIB AMAR
VERSUS
SHARIFA SALMABI HABIB ABDULLAH**

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Advocate for the Petitioner : Shri S. S. Bora h/f.
Shri A. P. Bhandari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd OCTOBER, 2018.

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PER COURT :

1. The petitioner/original defendant is aggrieved by the order dated 09/08/2018, by which, the Trial Court has rejected application Exhibit 61 in RCS No. 235/2013.

2. Grievance is that an issue of limitation has not been framed by the Trial Court when the issues were cast on 07/12/2015.

3. The learned Advocate appearing for the petitioner has strenuously criticized the impugned order. It is submitted that a cryptic order has been passed. There is hardly any

consideration of the application Exhibit 61, by which, the petitioner had prayed for framing of three additional issues, which read as follows :-

- "1] *Whether the suit of plaintiff hits by non-joinder of necessary parties ?*
- 2] *Whether the suit of plaintiff hits by law of limitation ?*
- 3] *Whether the suit of plaintiff is maintainable by law ?"*

4. Grievance is that though the plaintiff has already sold 60 R. land to a third party, the land has not been included in the common hotch-potch and the person to whom the land was sold, has not been arrayed as a defendant. An issue with regard to maintainability and limitation is also sought to be cast.

5. I find from the plaint that the plaintiff has approached the Court for partition and separate possession. She has also prayed for her undivided share in the property. A further prayer for injunction is also made.

6. I find that the Trial Court has framed the issues as regards whether, the plaintiff proves her right to the undivided

share in the property, whether, the plaintiff is entitled to the relief of separate possession of her separate share in the suit property and whether, the suit can be decreed. Insofar as the sale of the land allegedly by the plaintiff is concerned, that would be covered in the first issue as the plaintiff will have to prove that she has a right to an undivided share in the suit property. The defendants claimed that she has sold the land from the common hotch-potch. If it is proved that the plaintiff has a separate right and 60 R. land is already sold, it would be a part of her share. Then the Trial Court would suitably define her share.

7. Insofar as the limitation and maintainability issues are concerned, I find that the petitioner has preferred a single paragraph application Exhibit 61, wherein, there is hardly any description as to why the proposed issues need to be cast. The petitioner cannot point out as to whether, there is any limitation for partition and separate possession of ancestral property amongst the blood relations.

8. In this view of the matter, the Trial Court has rightly

concluded that there are no pleadings as regards the limitation and as regards the maintainability of the suit. Even I do not find that the issue of limitation or maintainability would appear from the pleadings of the parties.

9. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-