

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

932 WRIT PETITION NO. 12356 OF 2017

RAMDAS BHAUSAHEB PADOLE (DIED) THROUGH LRS
SMT. JANKIBAI WD/O RAMAS PADOLE AND OTHERS
VERSUS
RUKHMINI KASHINATH PADOLE AND OTHERS

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Advocate for Petitioners : Mr. Milind M. Joshi.

Advocate for Respondents : Mr. Shivprasad G. Jadhavar.

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CORAM : **V. K. JADHAV, J.**

DATE : 30th January, 2018.

ORDER:

. Heard finally with consent at admission stage.

2 I find no substance in this writ petition. The Petitioners / Appellants before the First Appellate Court has filed an application under the provisions of Order XLI Rule 25 of the Code of Civil Procedure contending therein that in the facts, pleadings and evidence led before the Court, the Trial Court should have framed the issues as detailed in paragraph 12 of the application and accordingly, requested the First Appellate Court to frame the said issue, refer it to the Trial Court with the direction to record the findings on the said issue.

3 The learned District Judge-5, Ahmednagar in paragraph 4 of the impugned order has made the following observations:

“4] So, in the present appeal, I think in view of the Order-41, Rule-25 of the Code of Civil Procedure, the respective learned advocates are to satisfy to this appellate Court that the learned trial Court failed to frame the Issue in spite of pleading before it, then the appellate Court is to decide whether there is necessity of framing such Issue and to remand the matter to the learned trial Court as I have mentioned herein above. So, in such circumstances, the appellants are not expected to file separate application in this regard before the appellate Court. So, the application filed by the learned advocate for the appellants at Ex.38 deserves to be filed being pre-matured.”

4 In the light of the above observations, the learned District Judge has held that the said application Exhibit 38 is pre-mature and further directed the parties to proceed with the matter as the matter is old being filed in the year 2010. In paragraph 4 of the impugned order as reproduced above, the learned District Judge has observed that it is for respective learned Advocate to satisfy the First Appellate Court that the learned Trial Court failed to frame the issues in spite of the pleadings before it and then it is for the First Appellate Court to decide

whether there is any necessity of framing such issue and remand the matter to the Trial Court.

5 The Petitioners have instituted the suit simplicitor for a decree of perpetual injunction. Though the Respondents / original Defendants have preferred the counter claim, the said counter claim alongwith the suit came to be dismissed by the Trial Court. It is for the First Appellate Court to consider whether the issue as proposed in the application Exhibit 38 is necessary in a suit seeking a decree of simplicitor perpetual injunction after hearing both the sides in the appeal. I do not find any fault in the impugned order. There is no substance in this writ petition. Hence, the following order:

ORDER

The writ petition is hereby dismissed. In the circumstances, there shall be no order as to the costs.

[V. K. JADHAV, J.]