

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

WRIT PETITION NO. 12446 OF 2018

Saw Mangalabai w/o Shankarrao Patil ... Petitioner

Versus

Vithal Mokhedhi Patil & others ... Respondents

Mr. , Advocate for the Petitioners.

Coram : N.M. Jamdar, J.

Date : 28 November 2018.

Oral Order:

1. Petitioner is aggrieved by the order passed by the learned Civil Judge rejecting application for recasting and adding new issues in the suit.
2. Petitioner is original plaintiff. This application was objected by the respondents stating that the suit is pending since 2016 and the parties are senior citizens. Learned counsel for the petitioner submitted that the issues are sought to be recast and new issues are to be added in view of burden upon the parties as per Hindu law.
3. The issues which have been framed by the learned Civil

Judge are part of the record. The issues are regarding the ancestral property, undivided share, entitlement of parties, relief of declaration etc. The learned Civil Judge has opined that no change is necessary because the issues that have been suggested by the petitioners are already incorporated in the issues that have been framed.

4. In view of this observation of the learned Civil Judge that the issues sought to be framed stand incorporated in the issues already framed, the petitioner is not prejudiced as the petitioner can argue and lead evidence. As far as the burden of proof is concerned, the issues that have been framed are in general nature and the issue as to who should lead evidence first and upon whom the burden lies is something which the learned Civil Judge will have to decide as per the provisions of law.

5. Therefore, keeping the contention of the petitioner open as to upon whom the burden lies to prove certain facts and who should lead evidence first, is to be considered when the evidence begins, the writ petition is disposed of.

N.M. Jamdar, J.