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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1084 OF 2018

Gorakhnath Dattatraya Hingde
and ors

... Petitioners.

V/s.

Babasaheb Rakhmaji Devre (decd)
through LRs

... Respondents

Mr. Siddhartha R. Ronghe, for petitioners
Mr. Rameshwar N. Gite, for respondent No.5.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioners and respondents.

2] By this writ petition, the petitioners are challenging the order dated 27.11.2017, passed below the Application at Exh.39 in R.C.S. No.352 of 2012

3] The said application was filed by the present petitioners, who are defendants before the trial Court for addition of issue Nos. 1 to 6, on the ground that the Court has not considered the objection raised in their written statement. It is submitted that for

adjudication of the dispute involved in the suit, these issues are required to be framed. The issues sought to be framed are:-

- I) Whether respondent-plaintiff is a member of Maratha Panch?,
- ii) Whether there is registration as “Maratha Panch” with the Charity Commissioner?
- iii) Whether suit property is entered as property of “Maratha Panch” with the Charity Commissioner?
- iv) Whether defendant No.1 is appointed as leader of Maratha Panch and if yes, whether it has been entered with the Charity Commissioner?
- v) Whether plaintiff has right to file suit?
- vi) Whether the suit is barred for mis-joinder or non joinder of parties like defendant Nos.2 and 3?

4] The trial Court has rejected the said application on two fold grounds. In the first place it was held that the application is filed at belated stage, after the evidence of respondent plaintiff was recorded. Secondly, on the ground that these issues are already implicit in the issues framed by the trial Court at Exh.23 on 2.2.2015.

5] According to learned counsel for the petitioners, even at this stage also, trial Court can frame the issues and give an opportunity to the respondents to file additional evidence. In

support of his submission, learned counsel for the petitioners has relied upon the judgment of this Court, in *Amardeep G. Madkalkar -vs- State of Goa and ors*, [2000 SCC online Bom.270]; wherein on the facts of the case, it was held that the trial Court should have allowed framing of additional issues, instead of dismissing the said application.

6] Learned counsel for the respondents has also placed reliance on the provisions of Order 1 Rule 13 of C.P.C., to submit that all the objections and grounds of non joinder of parties and mis-joinder of parties, are required to be taken at the earlier possible opportunity and in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen and any objection not so taken shall be deemed to have been waived.

7] According to learned counsel for respondents that the issues are framed, long back on 2.2.2105 and such objection to mis-joinder and non-joinder of necessary parties was not taken prior to or at the time of framing of the issues. Hence it has to be held that the said objection has been waived. As regards the other issues, it is submitted that the suggested issues are implicit in the issues already framed by the trial Court.

8] In this case, the trial Court has framed the issues at

Exh.23 as follows :-

ISSUES

1. Whether plaintiffs prove that suit property is owned by Maratha Samaj Panch?
2. Whether defendants prove that father of defendant No.1 was owner of the suit property?
3. Whether plaintiffs are entitled for the relief of declaration and injunction as prayed?

9] Thus, it can be seen that, as per these issues, in order to get the relief of declaration and injunction, respondents have to prove that the suit property is owned by Maratha Samaj Panch, respondents have to further prove that he is interested in Maratha Samaj Panch as it's member. Unless respondents prove these issues, needless to state that respondents cannot be extended the relief of declaration and injunction. Moreover, respondents have to further prove that this property is registered with the Charity Commissioner, if such registration is required. Without that, the trial Court, otherwise also cannot grant the relief. Therefore, the trial Court has rightly held that all these issues, which the petitioners want to raise by this application, are implicit in the issues framed earlier.

10] It is pertinent to note that even as regards, issue of mis-joinder and non-joinder of parties, the only contention raised is that

the defendant Nos.2 and 3 being co-owners or possessors, they are unnecessarily impleaded in the suit. If it is so, at the time of decreeing or dismissing the suit, the trial Court is bound to consider that contention, even in the absence of any specific issue raised to that effect. Apart from that this objection should have been raised by the petitioners at the earliest possible opportunity, which they have not raised.

11] It is significant to note that the issues are framed on 2.2.2015, in a suit filed in the year 2012. Thereafter the evidence of respondent plaintiff was also recorded. At this stage, this application is filed for framing of additional issues, which are implicit in the issues already framed. The trial Court was, thus, justified in rejecting the application, it being filed with an intent to protract and prolong the trial. In the writ jurisdiction of this Court, no interference is warranted in the impugned order.

12] According to learned counsel for the petitioners, the Court can recast the issues at any stage in view of Order 14 Rule 5 C.P.C. Needless to state that there has to be some material on record to show non framing of issues is in any way causing prejudice to the petitioners in their defence. The entire application of the petitioners is conspicuously silent about it. As, stated above, the issues framed by the trial Court, clearly covers the contentions raised by the

petitioners.

13] In view thereof, no fault can be found in the impugned order passed by the trial Court and therefore, there is no reason to disturb or interfere in the said order.

14] The Writ Petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]