

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9543 OF 2019

ASHOK SHALIKRAM JAISWAL AND OTHERS
VERSUS
SURYABHAN FAKIRCHAND RITHE AND OTHERS

Mr.H.S.Surve, Advocate for the petitioners.
Mr.A.D.Kasliwal, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 16/08/2019

PER COURT :

1. The petitioners/original defendants in Spl.Civil Suit No.144/2018 (Old No.RCS No.918/2008) are aggrieved by the order dated 21/06/2019 passed by the Trial Court, by which application Exh.108 filed by these petitioners seeking addition of the issues, has been rejected.

2. I have heard the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

3. There is no dispute that a sale deed registered on 07/12/1971 by defendant No.1, who is the father and husband of the plaintiffs,

interse, is assailed in the suit in 2008 and it is prayed that the sale deed be declared as void, a nullity and not binding on the plaintiffs. It is equally undisputed that though a specific pleading is set out by the defendants in their written statement, no issue as regards limitation has been framed.

4. The petitioners have raised one more issue as regards whether the suit could be maintained only as against the share derived by defendant No.1 who has acquired the said share in an earlier partition amongst him and his biological brothers and therefore, whether the suit would suffer on account of non-joinder of parties and failure to add other ancestral properties.

5. The learned Advocate for the plaintiffs submits that their father/husband, who is defendant No.1, had acquired a specific share by virtue of an earlier partition amongst him and his biological brothers. They are agitating only to the extent of their shares which would flow from the share of defendant No.1. They have nothing to seek from the shares which have gone to their real uncles and as such they are prepared to proceed with the suit on the footing on which it stands today.

6. In so far as the limitation aspect is concerned, I find that the Trial Court has declined to frame the issue for 2 reasons. Firstly, that the defendants have kept silent for about 7 years and secondly, the issue of limitation can be considered without framing such issue. I find such conclusion to be unsustainable. An issue of limitation has to be framed.

7. The learned Advocate for the petitioners submits on instructions that as they have led adequate evidence, a specific issue of limitation needs to be framed and they are not required to adduce further oral evidence.

8. In view of the above, this petition is partly allowed. The Trial Court shall frame an additional issue No.6, forthwith and which shall read as under :-

“Whether the plaintiffs prove that the suit is not barred by the Law of Limitation in view of the sale deed having been executed on 07/12/1971 ?”

9. In so far as the other contentions as regards whether the suit would result in granting reliefs to the plaintiffs in view of the

objections of the defendants in paragraph Nos. 2 and 4 are concerned, the same shall be considered by the Court on its own merits. No new issues are required to be framed.

10. In view of the above, the parties are at liberty to proceed to advance their final oral/written submissions keeping in view that the issue of limitation is directed to be framed. All contentions based on the pleadings are kept open.

(Ravindra V.Ghuge, J.)