

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2954 OF 2017

Sitaram Govind Panse and Anr.

... **Petitioners.*****Versus***

Laxman Govind Panse

... **Respondent.**

.....

Mr. A. M. Kulkarni a/w Mr. S. S. Diwan i/b Akshay Shinde for the
Petitioners.

Mr. G. S. Godbole i/b Manjiri Purasnis for the Respondent.

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CORAM : A. S. GADKARI, J.

DATE : 3rd DECEMBER, 2019**P. C. :**

1. By the present petition under Article 227 of the Constitution of India, the petitioners–original defendants have impugned an interlocutory Order dated 4th February 2017 passed below Exhibit 471 in Special Civil Suit No. 151 of 1996, thereby allowing application preferred by the respondent–original plaintiff for recasting of issues.

2. Heard Mr. Kulkarni, learned counsel for the petitioners at length and Mr. Godbole, learned counsel for the respondent. Perused the entire record annexed to the petition.

3. At the outset, it is to be noted here that, the aforesaid suit for partition is filed by the respondent in the year 1996 and the same is

pending on the file of the 6th Joint Civil Judge, Senior Division, Pune for more than 20 years.

The record indicates that, on 9th September 2015, the Trial Court framed in all 18 issues below Exhibit 285. Issue Nos. 2 and 12 reads as under :-

“2. Whether the plaintiff proves that, he is the sole and exclusive owner of CTS No. 588, Shukrawar Peth, Pune ?

12. Additional Issue No. 1 framed on 06.03.2008 Does plaintiff prove that, defendants purchased the properties described in paragraph 11-A and B out of income of joint property ?”

4. It is the contention of the respondent–original plaintiff that the issue No.2 is out of the context of the pleadings on record and is unnecessarily framed. That in issue No.12 the word “joint” has been erroneously typed instead of “suit”. In this context, the respondent - original plaintiff had filed application below Exhibit-471 for recasting of issues and prayed that, issue No.2 may be deleted from record and the word “joint” appearing in issue No. 12 be replaced with the word “suit”.

5. Mr. Kulkarni, learned counsel for the petitioner submitted that, in para No. 11(a) of the plaint the plaintiff himself, at one place, used the word “joint property” and therefore the word “joint” has been used by the trial Court while framing of issue No.12, below Exhibit 285. He further submitted that, issue No.2 is also necessary for deciding the controversy involved in the suit, as the suit is filed by the plaintiff for partition.

6. Perusal of para No.11(a) of the plaint would indicate that, it is the contention of the respondent-original plaintiff that, “the suit premises is purchased out of the income from the said suit property, and therefore the said acquired property also gets status of the joint property and hence the plaintiff has ½ undivided share right, title and interest in the said properties.....”.

It is thus the specific pleading of plaintiff that, the property mentioned in the plaint has been acquired out of the income from the ‘suit property’ not from the ‘joint property’. In view thereof, the trial Court has rightly deleted the word “joint” from issue No.12.

7. As far as issue No.2 is concerned, the record indicates that, the pleading of the parties to the suit is silent for giving rise to frame such an issue and therefore the Trial Court has rightly deleted the said issue from record.

8. After perusing the entire record, this Court is of the considered view that the Trial Court has not committed any error either in law or on facts while passing the impugned Order dated 04th February 2017.

9. Writ Petition being dehors of merits, is accordingly dismissed.

(A. S. GADKARI, J.)