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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11640 OF 2017

Sitaram Mahadu Bhondve & Anr.	..Petitioners.
V/s.	
Harakchand Pukhchand Gadiya	..Respondent.

Mr.Pramod J.Pawar for the petitioners.

Mr.Saurabh Butala for respondent Nos.1 to 6.

CORAM : M.S.SONAK, J.

DATE : APRIL 22, 2019

ORAL JUDGMENT

Heard Mr.Pawar, learned counsel for the petitioners and Mr.Butala, learned counsel for respondent Nos.1 to 6.

2. Rule. Rule made returnable forthwith with the consent and at the request of the parties.

3. Challenge in this petition is to the order dated July 14, 2017 by which the petitioners had applied for recasting of issues or rather for amendment of the issues.

4. The recasting / amendment is applied for are in respect of issue Nos.1 and 2 which read thus :-

“1. Does the plaintiff prove that the defendants agrees to sale right to

use road and well situated situated in the suit property to the plaintiff ?

2. *Does the plaintiff prove that the right to use road and well for proposed to be sold for consideration of Rs.5,00,000/- ? ”*

5. Mr.Pawar, learned counsel for the petitioners submits that it was never the case of the petitioners that defendants had agreed to sell the right to use road and well. However, it was the case of the petitioners that defendants, for a consideration of Rs.5,00,000/- had agreed to give the plaintiffs right to use the road and well situated in the suit property. He, therefore, submits that reference to the words 'sale' or 'sold' are required to be amended and that is the short amendment which the petitioners had applied for by filing an application at Exhibit-53.

6. Mre. Butala, learned counsel for respondents submits that the issues have been correctly framed. He submits that the moment there is reference to a consideration, the learned trial Judge has rightly considered it a fit case of sale of some rights. He, therefore, submits that there is no error in the impugned order and prays for dismissal of the petition.

7. According to me, the issues have to be framed on the basis of the pleadings. In the pleadings, there is really no reference to any

sale. Accordingly, the amendment which the petitioners had applied for to the issues was justified. Learned trial Judge erred in rejecting the application Exhibit-53.

8. Accordingly, the impugned order is set aside. Issue Nos.1 and 2 are now re-casted and the same which reads as follows:-

- “1. Does the plaintiffs prove that the defendants agreed to give to the plaintiffs, the right to use the road and well situated in the suit property ?*
- 2. Does the plaintiff prove that the defendants have given right to the plaintiffs to use the road and well for consideration of Rs.5,00,000/- ? ”*

9. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

10. It is made clear that this Court has not adverted to the merits of the matter and the parties to prove their own case by leading appropriate evidence in the matter.

11. All contentions of all parties are, therefore, left to be decided by the learned trial Judge during the trial of the suit.

12. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)