

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1820 OF 2019

Jaywant Laxman Thakre and others.	]	Petitioners
Vs.		
Ananta Laxman Thakre and others.	]	Respondents

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Mr. R.D. Suryawanshi, learned Counsel for the Petitioners.
Mr. D.V. Narhare, learned Counsel for Respondents No.1 to 3.

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CORAM : R.G. KETKAR, J.

DATE : 15TH FEBRUARY, 2019.

P.C.

Heard Mr. Suryawanshi, learned Counsel for the petitioners and Mr. Narhare, learned Counsel for the respondents at length.

2. As the regular Court presided over by the Hon'ble Mr. Justice K.K. Tated is not available today for judicial work, Mr. Suryawanshi has moved this Court as per the administrative order passed by the Hon'ble the Chief Justice.

3. This Petition takes exception to the order dated 25th September, 2018 passed by the learned Joint Civil Judge, Junior Division, Bhiwandi below Exhibit 121 and Exhibit 122 in Regular Civil Suit No.377 of 2011. By that order, the learned trial Judge rejected the applications Exhibit 121 and Exhibit 122 filed by the defendants to subject the witnesses of plaintiffs' for further cross-examination along with adducing further evidence on the ground of framing additional issues at Exhibit 52 on 18th September, 2018.

4. In support of this Petition, Mr. Suryawanshi submitted that on the basis of the pleadings of the parties, the learned trial Judge framed issues on 26th June, 2015 at Exhibit 52. When the matter was kept for passing final order in that suit, the learned trial Judge framed additional issues on 18th September, 2018. As the learned trial Judge has framed additional issues at the time of passing final order, the defendants are entitled to adduce evidence. He, therefore, submitted that the Petition requires consideration.

5. On the other hand, Mr. Narhare supported the impugned order.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. On 26th June, 2015, the learned trial Judge framed the following issues;

- “1] Whether the plaintiffs prove that, the suit properties are their ancestral properties?
- 2] Whether the plaintiffs further prove that, will deed dated 05/10/2010 executed by Laxman Kondu Thakare in favour of defendant No.1 is illegal, void and not binding on the plaintiffs?
- 3] Whether the plaintiffs prove that, they are entitled for partition as sought?
- 4] Whether the plaintiffs are entitled to get 1/6 th share in the suit properties as sought?
- 5] What order and decree?”

The learned trial Judge has framed following additional issues on 18th September, 2018;

- “2A] Whether the plaintiffs are entitled for the relief of declaration as prayed for?
- 4A] Whether the plaintiffs are entitled for perpetual injunction as prayed for?”

7. A perusal of additional issue No.2A shows that the same is covered by issue No.1 and 2. In so far as additional issue No.4A is concerned a perusal of the affidavit of evidence filed by plaintiff No.1 and in particular paragraph 10 shows that plaintiff No.1 has deposed in support of his prayer for issuing injunction. It is not in dispute that the defendants did not cross-examine plaintiff No.1 in that regard.

8. In view thereof and for the reasons stated in the impugned order, I do not find that any case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed with no order as to costs.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]