

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13000 OF 2018

Shivajij Saba Kanade
(Since deceased through LRs) ...Petitioner

vs.

Gopal Narayan Kanade and Anr. ...Respondents

Mr. Bhushan Walimbe, for the Petitioner
Mr. Pravin Gole, for Respondent Nos. 1A to 3E and 11 to 17.

CORAM : M. S. SONAK, J.

DATE : MAY 02, 2019

ORAL JUDGMENT

. Heard Mr. Bhushan Walimbe, learned counsel for the Petitioner and Mr. Pravin Gole, learned counsel for Respondent Nos. 1A to 3E and 11 to 17 who are the contesting Respondents.

2. Taking into consideration, the issue involved in this Petition, rule is granted and the same is made returnable forthwith.

3. In the Regular Civil Suit No. 73 of 1996, the learned trial Judge vide order dated 23rd August, 2016 recast the issues. The issues consequent upon their recast read as follows :

- 1) *Does it prove that Plaintiff is in possession of any portion of any of the suit properties as claimed by him ?*
- 2) *Does it prove that defendants tried to obstruct the possession of Plaintiff over suit properties ?*
- 3) *Does the suit is bad in the eyes of law for non-joinder of necessary parties ?*
- 4) *Does the suit is bad in the eyes of law for non-joinder of all the properties ?*
- 5) *Does suit is bad in the eyes of law for want of cause of action ?*
- 6) *Does the suit is barred by principle of Res judicata ?*
- 7) *Does the suit is bad in the eyes of law for want of proper frame ?*
- 8) *Does Plaintiff entitled any of the reliefs either main or alternative as prayed for ?*
- 9) *What order ?*

4. The Petitioner applied for re-framing of the issues *inter alia* on the ground that the issues as recast do not reflect the true controversy between the parties. Upon perusal of the pleadings, the interest of justice will be served if the issue Nos. 1 and 2 as framed above are deleted and are substituted with the following issues:

- 1) *Does the Plaintiff prove that he is in joint possession of the suit property or any portion of the suit property A and B as claimed by him in the Plaint ?*
- 2) *Whether the Plaintiff prove that the Plaintiff is entitled for 1/3 share in the suit property A and B as well as separate possession corresponding to such 1/3 share ?*

5. In addition to the aforesaid, the learned trial Judge is directed to frame yet another issue to be issue No. 2A) in the following terms:

2A) Whether the Plaintiff is entitled to any injunction in order to protect the alleged joint possession in respect of the suit property or in portion of the suit property A and B ?

6. The impugned order dated 17th October, 2018, is accordingly set aside and the learned trial Judge is directed to re-frame the issues in the aforesaid terms and thereafter proceed with the suit.

7. The interim order granted earlier is hereby vacated.

8. All contentions of all the parties are left open, since this Court has not expressed any opinion on the merits of the rival contentions of the parties.

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

(M. S. SONAK, J.)