

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.6924 of 2018
Vijay Rekhi & Anr. Vs. Deepak Rekhi

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. Bhutada, Advocate for petitioner
Mr. M.A. Quereshi, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 18, 2019

By this writ petition, the petitioners (original defendant No.1), have challenged order dated 11/01/2018, passed by the Court of Joint Civil Judge (Junior Division), Nagpur (Trial Court), whereby an application for recasting of issues (Exh.33) has been rejected.

2. The sole respondent (original plaintiff) has filed a suit for partition and separate possession against the petitioners, who are the original defendants. There is no dispute about the fact that the parties are related to each other. In the written statement filed on behalf of the petitioners it was claimed that the suit property, which was initially a barren land was developed by the petitioner No.1 by investing huge amounts and that if the partition of the said suit property was sought, question of appropriately compensating the petitioner No.1 would

arise. The petitioner No.1 has claimed that he had exclusive possession of the suit property on the basis of family arrangement between the parties. The said family arrangement is denied by the respondent.

3. In this situation, the Trial Court had framed the following issues by order dated 19/01/2015.

“1. Does the plaintiff prove that he himself and defendant are joint owners of the suit property?

2. Does the plaintiff prove that he has share in the suit property? If yes to what extent?

3. Does the defendant prove that their internal family arrangement of suit property was vested in defendant No.1 perpetually?

4. Whether the suit is undervalued?

5. What order and decree?”

4. Thereafter, when the examination-in-chief of the respondent had been recorded on 16/11/2016, the petitioner moved an application for recasting of issues (Exh.33). In the said application, the following three issues were proposed on behalf of the petitioners.

“(A) Does the defendant No.1 prove that he has exclusively and alone spent an amount of roughly Rs.45,00,000/- on improving the condition of the suit land since 2003?

(B) If the answer to the above is in the affirmative, is defendant No.1 entitled to his share in the above expenditure if the family arrangement is culminated prematurely at the instance of the plaintiff?

(C) Does the plaintiff prove that the defendants are doing agricultural work in the suit land without the permission of the plaintiff?"

5. By the impugned order, the Trial Court rejected the said application on the basis that in the absence of a counter claim and payment of stamp duty, the proposed additional issues could not be framed. The learned counsel for the petitioners submitted that the Trial Court failed to appreciate the nature of the suit in the present case. It was submitted that since the respondent had filed a suit for partition and separate possession and parties were closely related to each other, all the parties were plaintiffs as well as defendants. It was submitted that in this situation, considering the nature of claim sought to be raised on behalf of the petitioners on the basis of family arrangement claimed by them, it could not be said that the petitioners were mandatorily required to raise a counter claim in order to seek framing of additional issues.

6. The learned counsel appearing for the respondent did not dispute the fact that the suit pending before the Trial Court is a suit for partition and separate possession and that considering the nature of the suit and pleadings raised in the written statement, the petitioners could raise issue of monetary compensation, but, the same would be sufficiently

covered under issue No.3 already framed by the Trial Court. It is submitted that if at all the petitioners proved the internal family arrangement claimed by them, the question of framing additional issues would arise and they would be covered in issue No.3.

7. Considering the nature of the suit pending before the Trial Court, this Court is of the opinion that the reasoning given by the Trial Court for rejecting the application is not appropriate. Filing of counter claim in the facts and circumstances of the present case would not be a *sine qua non* for monetary compensation and consequently, framing of additional issues on behalf of the petitioners.

8. A perusal of the proposed additional issues shows that even if proposed issues No. (A) and (B) are contingent upon issue No.3 already framed by the Trial Court, it would be in the interest of justice that the said two proposed additional issues are permitted to be framed, for a comprehensive determination of the dispute between the parties. The proposed issue (C) is found not germane in the facts and circumstances of the present case.

9. In view of the above, the writ petition is partly allowed and impugned order is quashed and set aside. The application for recasting issues (Exh.33) filed by the petitioners is partly allowed to the extent

that proposed issue Nos. (A) and (B) stated in the said application are directed to be framed as additional issues. The Trial Court shall now proceed with further proceedings in the pending suit. Considering that the suit is pending since the year 2013, the Trial Court shall decide the suit expeditiously and in any case within a period of six months from today.

10. Needless to say, the Trial Court shall proceed to decide the suit, without being influenced by the order passed by this Court and as far as possible adjournment shall not be granted by the Trial Court.

JUDGE

MP Deshpande