

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

Writ Petition No.7344 of 2018

(Gulam Dasatgirkha Bismillahkha and another Vs. Sharifa Begam Majid Khan and others)

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

Court's or Judge's orders.

Shri V.N.Patre, Advocate for the petitioners.
Shri Amit Kukday, Advocate for respondent no.1.

CORAM : Manish Pitale, J.
DATED : APRIL 26, 2019.

By this Writ Petition, the petitioners (original defendants) have challenged the order dated 16.07.2018 passed by the Court of 6th Joint Civil Judge Junior Division, Pusad (Trial Court), whereby an application filed by the petitioners under Order XIV Rule 5 of the Code of Civil Procedure, for framing of additional issues, has been partly allowed. Although, the Trial Court has partly agreed with the petitioners and amended one particular issue, the petitioners are dissatisfied because according to them, all the issues proposed by them ought to have been framed by the Trial Court.

The respondents (original plaintiffs) herein filed suit for declaration and possession against the petitioners. It is the case of the respondents that their predecessor had purchased the suit property and they were entitled to possession thereof, which was in illegal possession of the petitioners (original defendants).

The Trial Court initially framed the following issues on 23.06.2015:

- “1. *Do Plaintiffs prove their title over suit property?*
2. *Do Plaintiffs prove that defendants made encroachment over suit property?*
3. *Whether suit as within limitation?*
4. *Whether suit is list by provision of Order 7 R.S. of the C.P.C.?*
5. *What order & decree?”*

Thereafter, on 16.07.2018 the petitioners filed the aforesaid application under Order XIV Rule 5 of Code of Civil Procedure, for recasting of issues and for framing of additional issues. The petitioners claimed that the issue pertaining to encroachment framed by the Trial Court was not proper and they proposed that the plaintiffs (respondents herein) would be required to prove that the petitioners were in illegal possession of the suit property. Since, the Trial Court partly allowed the application and recast the issue, there is no grievance raised in that respect on behalf of the petitioners. But, the petitioners are aggrieved because other issues proposed by them have not been framed by the Trial Court.

It has been found by the Trial Court that other issues proposed by the petitioners pertain to minor aspects of the matter and specific separate issues are

not required to be framed. A perusal of the application filed by the petitioners shows that they desire to have the issues framed on details of the manner in which the predecessor of the respondents purchased the suit property, as also the issue pertaining to the claim of the respondents as to when they became first aware about mutation entries etc. The issues proposed by the petitioners in that regard do show that all such aspects of the disputes between the parties are clearly covered under the issues already framed and now recasted by the trial Court, particularly under the Issue nos.1 and 4.

Therefore, this Court is of the opinion that the Trial Court has not committed any error in passing the impugned order and only partly allowing the application of the petitioner. Accordingly, the Writ Petition is dismissed.

JUDGE

ambulkar