

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1233 OF 2021

Sow. Vidhya Sanjay Patil & another

Petitioners

Versus

Kopargaon Nagar Parishad & others

Respondents

Mr.K.M.Nagarkar, advocate for the petitioners

Mr.M.M.Patil Beedkar, advocate for Respondent No.1.

Mr.S.S.Kulkarni, advocate for Respondent No.3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 02nd August, 2021.

PC :

1 Heard Mr.Nagarkar, learned Counsel for the petitioners. Learned Counsel Mr.M.M.Patil Beedkar appears for Respondent No.1 and learned Counsel Mr.Kulkarni, appears for Respondent No.3.

2 In view of the nature of the order being passed, the further necessity to serve other respondents, stands obviated. The petitioners challenge the order dated 16.12.2020, by which the application for framing additional issues has been rejected by the learned trial Court. It is material to note that in the instant suit,

which is of the year 2006, the plaintiffs have closed their evidence on 19.09.2013 and the defendant no.3 had closed her side in January, 2020. Thereafter an application came to be filed on 17.02.2020 by the plaintiffs with a request to forward handwriting of defendant no.3 to the handwriting expert's opinion, which came to be rejected. In March, 2020, the application for framing additional issues has been filed, at which stage the matter was listed for final arguments. Admittedly, the stage of framing issues was passed long past whereby the issues were framed on 05.08.2010 below Exhibit-125. From 2010 till 2020 no need was felt by the plaintiffs for recasting of the issues for the period of ten years from the date of framing of issues. That apart, if any such application was to be made, the same ought to have been made before the plaintiffs closed their evidence on 19.09.2013.

3 The contention of the learned Counsel for the petitioners to the effect, that since the Nagar Parishad did not enter into the witness box, therefore, the requirement of framing of the additional issues arose, does not appeal to reason as the same, has taken place before the defendant no.3 had closed her evidence in January 2020. This clearly appears to be an attempt to prolong the final decision of the suit, which is pending since 2006. The

learned Counsel for the petitioner relies upon **Sitabai Pandurang Yerne Vs. Durgabai Khushal Yerne**, 2016 (4) ALL MR 316; in which, no specific issue was framed by the trial Court about validity of customary divorce in the community to which the parties belong, in a case where there was a specific plea raised as reflected from the earlier issues framed, as to whether the plaintiff prove that she was a legally wedded wife of the deceased and a member of the joint Hindu Family. In appeal, the appellate Court recording a finding that the issue was necessary, had remanded back the matter to the trial Court against which writ petition was filed, which came to be dismissed.

4 In the present case, a perusal of the issues, as framed at Exhibit-125, a certified copy of which was handed across the bar by the learned Counsel for respondent no.3, indicates that the suit is in regard to creation of a road by erection of a door and whether excess construction was made by the defendant no.3. All the additional issues, as indicated in the application below Exhibit-356, would stand covered in view of issues no.1 and 2, as rightly found by the learned trial Court in para 14 of the impugned order, and, therefore, the judgment in **Sitabai** (*supra*) is of no assistance to the case being canvassed. Therefore, there is no merit in the

instant matter.

5 Writ Petition is accordingly dismissed

6 It is made clear that since the matter is already fixed for final arguments, the trial Court shall go ahead and decide the same within a period of two months from today in the light of the fact that in W.P.No.5603 of 2007, this Court had, by an order dated 15.01.2008, directed the matter to be decided within six months from the date of the order.

(AVINASH G. GHAROTE)
JUDGE

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