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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2694 OF 2010

Balaji s/o Baburao Kondawar
Age – 39 years, Occ – Agriculture
R/o Village- Dour, Taluka – Bhokar
District - Nanded

PETITIONER

VERSUS

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|---|-------------|
| 1. Deepak s/o Gangadhar Kondawar
Age – 24 years, Occ – Education and
Agriculture R/o Village – Dour
Taluka – Bhokar, District – Nanded
(At present Ashta Vinaya Nagar,
Bhokar, Taluka – Bhokar, District – Nanded) | RESPONDENTS |
| 2. Baburao s/o Nagnath Kondawar
Age – 65 years, Occ – Agriculture
R/o Dour, Post – Halda
Taluka – Bhokar, District – Nanded | |
| 3. Laxman alias Lacchiram s/o Nagnath Kondawar
Age – 63 years, Occ – Pensioner (Teacher)
R/o Daur, Taluka – Bhokar, District – Nanded
(At present Sahyognagar, Nanded) | |
| 4. Gangadhar s/o Nagnath Kondawar
Age – 59 years, Occ – Service
R/o Dour, Taluka – Bhokar, District – Nanded
(At present Ashta Vinaya Nagar,
Bhokar, Taluka – Bhokar, District – Nanded) | |

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Mr. Prashant R. Katneshwarkar, Advocate for the petitioner
Mr. Rajat Patoni h/f Mr.A.P.Bhandari, Adv. for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th JANUARY, 2021

JUDGMENT :

1. Heard Mr. P. R. Katneshwarkar, learned advocate appearing for the petitioner and Mr. Rajat Patoni holding for Mr. A. P. Bhandari, learned advocate appearing for respondent No. 1.

2. The petition has been moved against order dated 3rd February, 2010 passed by Civil Judge, Junior Division, Bhokar on Exhibit-158 in Regular Civil Suit No. 35 of 2005, thereby allowing to recast and issues.

3. Mr. P. R. Katneshwarkar, learned advocate appearing for the petitioner contends that present suit bearing Regular Civil Suit No. 35 of 2006 is a vexatious litigation on untenable ground. He submits that a suit bearing Regular Civil Suit No. 31 of 2003 had been filed by present petitioner for declaration of ownership and perpetual injunction, *inter alia*, in respect of the property concerned in present matter. He submits that in said suit, the matter had been defended by respondent No. 1 as defendant No. 1 and other defendant, his father, defendant No. 2 in said suit.

4. He submits that the suit had been partly decreed granting declaration of ownership, while decree for injunction had been not acceded to. An appeal came to be filed on behalf of

respondent No. 1 so also cross objection was filed by present petitioner. The suit came to be decreed in *toto* by the first appellate court, in the cross objection filed on behalf of present petitioner under order dated 23rd March, 2006.

5. Learned advocate Mr. Katneshwarkar further refers to that albeit, second appeal is pending against said decision at the behest of present respondents No. 1 and 4. He submits that in said litigation not even by whisper, issue regarding minority of defendant No. 1 (present respondent No. 1) had ever been referred to. However, Regular Civil Suit No. 35 of 2006 came to be filed on behalf of present respondent No. 1 for declaration that he is owner and possessor of half portion of gut No. 233 and also sought declaration that judgment and decree passed in Regular Civil Suit No. 31 of 2003 is not binding on him.

6. He submits that while the issues were framed in 2007, an application came to be moved for re-casting issues, three years down, in 2010 under Exhibit-158. He submits that having regard to antecedents as well as that there is indolent prosecution of the matter, while evidence has commenced, application Exhibit-158 ought not to have been allowed.

7. On the other hand, Mr. Rajat Patoni, learned advocate

appearing on behalf of respondent No. 1 submits that the issues arise out of pleadings and nexus of issues are the pleadings. It is not the case that there are no pleadings in respect of minority of present respondent No.1. There are in fact pleadings to that effect and the same have been resisted by present petitioner, defendant in Regular Civil Suit No. 35 of 2006. In the circumstances, issues, as sought to be framed, do arise. He submits that trial judge, having regard to pleadings and going by the provisions of law, has passed the order, which is proper and legal.

8. It appears that present respondent No. 1 in paragraphs No. 9 and 10 of Regular Civil Suit No. 35 of 2006 has contended that he was minor when Regular Civil Suit No. 31 of 2003 had been lodged and no proper procedure had been followed in that respect. It is referred to that there had been misrepresentation about him being twenty two year old in said suit and makes reference to some legal aspects about entitlement to raise dispute in respect of decree passed in Regular Civil Suit No. 31 of 2003.

8. It appears that issues framed in 2007 do not specifically, explicitly make reference to minority of present respondent No. 1. In the circumstances, while there is no dispute about that

there are pleadings to that effect and the same have been resisted, it is not the case wherein this court shall meddle with the order. Writ petition, therefore, is not entertained and is dismissed with no order as to costs.

[SUNIL P. DESHMUKH]
JUDGE

drp/wp2694-10