

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

WRIT PETITION NO.4206 OF 2021

VAIJANTABAI KISAN BHOSALE
VERSUS
SOJARBAI BALA KOLEKAR ALIAS SOJARBAI KISAN BHOSALE DIED LRS.
HIRAMAN BALA KOLEKAR ALIAS HIRAMAN

...
Advocate for Petitioner : Ms. Fatema Kazi h/f Mr. S.S. Kazi

...
CORAM : MANGESH S. PATIL, J.
DATE : 06.09.2021

PER COURT :

Heard the learned advocate Ms. Fatema Kazi holding for Mr. S.S. Kazi for the petitioner.

2. The petitioner who is the original plaintiff is impugning the order passed by the learned Judge of the Civil Court dated 27.06.2019 whereby he allowed the Application of the respondents defendants (Exhibit-102) and recast issue No.3, indicating the burden to prove the issue on the plaintiff to establish the fact that she is the legally wedded wife of deceased Kisan Bhosale.

3. The learned advocate for the petitioner would submit that in an earlier litigation, the respondents defendants had specifically admitted of the petitioner being the legally wedded wife of Kisan. It is in view of such state of affairs that earlier issue No.3 was framed properly. There was no reason to recast it. The respondents defendants have been attempting to protract the litigation and the learned Judge ought not to have conceded to

the request.

4. I have carefully perused the papers. There cannot be any dispute about the fact that the petitioner-plaintiff is claiming to be the wife of the deceased Kisan Bhosale. There is also no dispute that in the Written Statement of the respondents defendants (Exhibit-30) they specifically deny the fact of she being the legally wedded wife of Kisan.

5. The issues were framed at (Exhibit-59) and particularly the issue No.3 was as under :

“3. Do defendants prove that the plaintiff is not legally wedded wife of deceased Kisan Bhosale ?”

As can be appreciated, in spite of specific denial by the respondents defendants about petitioner plaintiff being the wife of Kisan, the issue was framed *ex facie* incorrectly putting a negative burden on the respondents defendants to establish that she was not Kisan's wife. The error was apparent on the face of it and has been sought to be corrected by recasting the issue which reads as under :

“Do plaintiff prove that she is legally wedded wife of deceased Kisan Bhosale ?”

6. Considering the above mentioned facts and circumstances, I do not find any error muchless causing any prejudice to the plaintiff petitioner in the order impugned in the Writ Petition.

7. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)