

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO. 9613 OF 2013
WITH
CIVIL APPLICATION NO. 1349 OF 2021
IN WP/9613/2013

ANITA W/O PRADEEP SONAWANE
VERSUS
DILIP S/O KONDIBA SONAWANE

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Advocate for Petitioner : Mr. A. N. Nagargoje
Advocate for Respondent : Mr. B. A. Darak

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CORAM : V. K. JADHAV, J.
DATED : 12TH FEBRUARY, 2021

PER COURT :-

1. Heard finally with consent at admission stage.
2. Petitioner is the original plaintiff, instituted the suit for a decree of perpetual injunction simplicitor. In the suit, respondent no.1/defendant has appeared and contested the suit by filing written statement.
3. Learned counsel for the petitioner submits that though the petitioner has given reference to the compromise way back in the year 2001 in a suit and on the basis of the said
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compromise, possession was delivered, however, the respondent/defendant has raised a plea that in the year 2009 on the day of *Gudi Padwa*, there was oral partition and accordingly the document to that effect was prepared. The petitioner has therefore filed application Exhibit 44 for framing an additional issue to that extent. By the impugned order dated 04.09.2013, the trial court has rejected the said application. Learned counsel submits that even though the suit is instituted for a decree of perpetual injunction, if the said issue is not framed and the burden is not cast upon the respondent/defendant, the petitioner/plaintiff, who is a widow, would not get a decree of perpetual injunction.

4. Learned counsel for the respondent/defendant submits that in a suit simplicitor for a decree of perpetual injunction, no issue can be framed casting burden on the respondent/defendant.

5. It appears that in terms of the interim order passed by this Court, the further proceedings in R.C.S. No. 133 of 2010 are stayed since 2013. It is a suit simplicitor for a decree of
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perpetual injunction. The respondent/defendant, though has raised the plea as mentioned above, however, there is no counter claim filed by the defendant. In view of the same, I find no error in the impugned order passed by the trial court that framing of the said issue is unwarranted and uncalled for and it is for the plaintiff himself to prove her legal possession and the obstruction as alleged. Thus, considering the entire aspect of the case, I do not find any substance in this Writ Petition. Hence, the following order:

ORDER

- I. The Writ Petition is hereby dismissed.
- II. Considering the old pendency of the suit, the trial court is hereby directed to dispose off the suit on priority basis, as expeditiously as possible.
- III. In view of disposal of the petition, nothing survives for consideration in the pending civil application and the same also stands disposed off.

(V. K. JADHAV, J.)

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