

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

WRIT PETITION NO.13010 OF 2021

RAJABHAU MANIK DESHMUKH
VERSUS
AVINASH ARUNRAO DESHMUKH AND ANOTHER

...

Advocate for Petitioner : Mr. Sabnis h/f. Mr. V.D. Gunale

...

CORAM : MANGESH S. PATIL, J.

DATE : 30.11.2021

PER COURT :

After the suit was reserved for hearing final argument that an application was moved by the petitioner seeking addition of issues pertaining to his claim for adverse possession and limitation. By the order under challenge, the trial court has rejected that application.

2. The learned advocate for the petitioner referring to the order XIV Rule 5 of the Civil Procedure Code would strenuously submit that it is obligatory on the part of the trial court to frame issues if those arise from pleadings and are necessary for just decision of the Suit, at any stage of proceeding. Without assigning any reason, just because the matter has been remanded by the High Court and is awaiting hearing final argument that the application has been rejected. The order is perverse and arbitrary and be quashed and set aside.

3. The Suit was filed way back in the year 2008 seeking possession of the suit property. The petitioner filed his written statement in the year 2009. He did raise a plea in paragraph No.12 about having become owner of the suit property by way of adverse possession. However, it appears that since thereafter the suit proceeded without framing any issue touching this plea of adverse possession.

4. Admittedly, in the first round, the matter had reached up to this Court in Second Appeal and it is thereafter that the Suit was remanded and now has reached the stage of hearing final arguments. It is at that stage that the petitioner sought to add the issues touching the aspect of adverse possession and limitation.

5. Since it is a suit for possession based on title, by virtue of Article 65 of the Limitation Act, 1963 the limitation would begin to run from the date possession of the defendant becomes adverse. If really the petitioner was interested in raising such a plea and getting it decided he could have made a similar request for framing the issues of adverse possession and limitation way back. He allowed that plea to be waived by his conduct. It is conspicuous that even after the remand the request for framing this issue was not promptly made. Even while the Suit was remanded by this Court he did not seek any such liberty as well.

6. In view of the above state of affairs, irrespective of the fact that the order under challenge does not clearly mention various grounds for rejection of the application, the aforementioned facts and circumstances, in my considered view are eloquent enough not to interfere in the order under challenge.

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

(MANGESH S. PATIL, J.)