

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4623 OF 2021

Shamrao Nana Shinde
(Deceased) Through LRs. .. Petitioners

Vs.

Rajaram Dattu Shinde & Ors. .. Respondents

...

Mr. Nikhil N. Pawar with Mr. Sarvajit B. Patil for the petitioners.

Mr. Girish R. Agrawal for the respondents.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 24TH NOVEMBER, 2021.

P.C:-

1. The petitioner is aggrieved by an order passed by the Joint Civil Judge, Senior Division, Karad in Regular Civil Suit No.426 of 2005 below Ex-133, which is an application filed by the plaintiff for framing an additional issue.

2. The suit being filed by the plaintiff in the year 2005 for declaration and permanent injunction, the issues came to be framed on 17/01/2008 and the burden was cast on the plaintiff to

establish that the plaintiff is in lawful possession of the suit property. Issue No.3 was framed to the effect that whether the plaintiff has established that the division and possession in terms of the earlier Civil Suit No.124 of 1974 is erroneous, is established. Issue of *res judicata* is also framed along with the issue as to whether the plaintiff is entitled to relief as sought in the plaint. The petitioner moved an application for framing an additional issue as to whether the decree obtained in Regular Civil Suit No.124 of 1974 filed by the defendants seeking partition against the ancestors of the plaintiff is fraudulent. The said suit came to be decreed on 30/09/1994 and the plaintiff/petitioner herein is a party to the proceedings and the said decree was never challenged in appeal and has attained finality.

3. In the wake of the aforesaid, learned Judge has rightly recorded that the issues framed are sufficient for the just decision of the case and, there is no necessity for framing additional issue as sought by the plaintiff in the application preferred by him. The application is rightly rejected by the learned Judge. I see no reason to interfere with the findings. Necessarily, the writ petition is dismissed.

[SMT. BHARATI DANGRE, J.]