

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.2942 OF 2021**

Mr. Subhash Manohar Bathe .... Petitioner

Vs.

Smt. Sunanda Ramesh Chavan & Ors..... Respondents

Mr. Amey Deshpande for Petitioner  
Mr. Jaydeep Deo for Respondents

**Coram : NITIN W. SAMBRE, J.**  
**Date : 5TH AUGUST, 2021**

P.C.:

1. Heard.
2. Vide order below Exhibit 184, in a Suit for partition and declaration, at the fag-end, additional issues were framed, which is questioned in the petition by the defendant on the ground of absence of pleadings.
3. Learned counsel appearing for the Petitioner would urge that even if the suit initiated by the Respondent is for partition, unless

the pleadings in support of the claim of status of ancestral property and that of the execution of Will dated 4<sup>th</sup> December, 2016 by deceased- Sushila are pleaded, the Court ought not to have framed additional issues. To substantiate the said contentions, reliance is placed on the judgment of Hon'ble Apex Court in the matter of Kalyan Singh Chouhan Vs. C.P. Joshi, reported in (2011) 11 Supreme Court Cases, page 786.

4. The Counsel for the Respondents would support the order impugned based on the pleadings.

5. I have analysed the submissions in the light of earlier issues framed by the trial Court, which are at Exhibit '73' in the Suit.

6. The said issues specifically deal with the status of the property purchased by the mother i.e. deceased- Sushila in the year 1963, out of her own income i.e. to say her self acquired property and also the construction carried out by her. As such, already there exist an issue as regards status of the suit property being an ancestral property.

What is sought to be looked into by the trial Court by framing additional issues at 12(a) and 12(b) are in relation to the partition of gold ornaments based on the Will of deceased-Sushila executed on 4<sup>th</sup> December, 2006.

7. The fact remains that the suit for partition, entire suit property is required to be put in hotchpotch and entitlement of the claim for partition is required to be adjudicated. The fact remains that the issues of Will by deceased- Sushila is brought on record through pleadings of the parties and that being so, the Court felt it necessary to frame an additional issues as has been empowered under Order 14, Rule 5(2) of Code of Civil Procedure.

8. In these backdrop, it cannot be said that the additional issues framed at 12(a) and 12(b) vide the order impugned sans pleadings. That being so, the claim of the Petitioner that the additional issues are framed in absence of pleadings cannot be sustained.

9. As such, the petition is liable to be dismissed and dismissed accordingly.

10. However, this will not preclude the Petitioner/ Defendant from canvassing issue that the suit suffers from non-joinder of necessary parties.

**( NITIN W. SAMBRE, J.)**