

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAO) No.555/2021
IN
XOB No.58/2019
IN
Second Appeal No.709/2004

Mohan s/o Khushal Sakharkar & Anr. Vs. Smt. Laxmibai w/o Narayanrao Golhar & Ors.

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri V.G. Wankhede, Advocate for the Appellants.

Shri A.V. Bhide, Advocate for the Respondents/Cross-objectors.

CORAM : S.M. MODAK, J.

DATE : 25th OCTOBER, 2021.

Heard learned Advocate Shri Bhide for all the cross-objectors/respondents in this appeal. Respondent No.1-Khushal Sakharkar was the sole defendant earlier. Respondent No.2-Mohan Sakharkar and respondent No.3-Arvind were added as party defendants after this Court has directed the trial Court to consider the application for amendment filed by the plaintiffs. It was allowed and respondent Nos.2 and 3 were joined as party defendants. After that, both the parties have adduced evidence before the trial Court.

02] The appellants are the sisters of respondent No.1-Khushal Sakharkar. They have asked for partition in the suit properties. Initially, it was granted for some of the lands by the trial Court. It was confirmed by the first Appellate Court. The present second appeal has been filed by them for getting the share in the remaining suit properties. This Court on 9th July, 2013 has formulated two substantial questions of law.

03] By the same order, the direction was given to the trial Court by invoking powers under Order 41 Rule 25 of CPC to decide the amendment application and to record the evidence. After that the trial Court had given the findings on 7th March, 2019 on one issue framed. The plaintiffs/appellants were held entitled to share in Gat Nos.25 and 2.

04] In view of that findings, the present respondents have filed Cross-objection No.58/2019. They have proposed five substantial questions of law. It was filed on 26th April, 2019. At that time, the findings given by the trial Court were not certified by the first Appellate Court. The first Appellate Court did this on 7th May, 2021 when this Court has reminded about the same.

05] Now, the respondents/cross-objectors want to take three more substantial questions of law along with the original substantial questions of law suggested. The reason quoted for the amendment is that when the cross-objection was filed earlier, at that time, certification was not done.

06] Today, there is a request for grant of time to file reply to the amendment application made on behalf of the appellants. This Court has already granted time for filing reply as per the order dated 20th September, 2021. This Court is not inclined to give more time. Yet, this Court has not framed substantial questions of law suggested in the cross-objection. The appellants are at liberty to oppose them when this Court will hear the parties. In view of that, following order is passed—

ORDER

- i. The application is allowed.
- ii. The amendment suggested in the application be permitted.
- iii. Amendment be carried out in the cross-objection.
- iv. Its copy be supplied on the appellants.
- v. The civil application is disposed of.

07] The appellants are at liberty to argue on the line that no more substantial questions of law as suggested originally and by way of amendment involve.

08] In view of that, matter be fixed on 1st December, 2021 for hearing arguments on substantial questions of law as per the cross-objection.

JUDGE

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