

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

WRIT PETITION NO.2159 OF 2022

1. Gopalkrishna S/o. Digambarrao Kulkarni,
Age: 51 years, Occ.: Business and Agri.,
R/o Nimbhora, Tq. Kannad, at present
Mauli Nagar, in front of Datta Mandir and
Ganpati Mandir, Beed Bypass, Aurangabad.
2. Ramkrishna S/.. Digambarrao Kulkarni,
Age: 35 years, Occ.: Business and Agri.,
R/o. Siemens Company Housing Society,
Bajaj Nagar, Aurangabad.
3. Bhagyashree Gopalkrishna Kulkarni,
Age: 51 years, Occ.: Housewife,
R/o Nimbhora, Tq. Kannad, at present
Mauli Nagar, in front of Datta Mandir and
Ganpati Mandir, Beed Bypass, Aurangabad.
4. Dhanshree Ramkrishna Kulkarni,
Age: 27 years, Occ.: Housewife,
R/o. Siemens Company Housing Society,
Bajaj Nagar, Aurangabad. ... Petitioners

Versus

1. Rajshekhar S/o. Digambarrao Kulkarni,
Age: 45 years, Occu: Business and Agri.,
R/o Nimbhora, Tq. Kannad,
Dist. Aurangabad at present,
Plot No.32, Jawahar Colony, Hivarkhede
Road, Kannad.
2. Chandrashekhar S/o. Digambarrao Kulkarni,
Age : 40 years, Occu.: Business and Agri.,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad, at present Sneh Nagar,
behind Old High Court Building, Auranabad
(Original plaintiff Nos. 1 and 2)

3. Lilabai W/o Arunrao Bendre,
Age: 50 years, Occ.: Housewife,
R/o Varud Kaji via Chilkalthana,
Tq. & Dist. Aurangabad.
4. Ashwini W/o. Arunrao Pade,
Age: 47 years, Occu.: Housewife,
R/o. Brahmin Galli Gangapur,
Tq. Gangapur, Dist. Aurangabad.
5. Sau. Prabhavati Pramodrao Kulkarni,
Age: 42 years, Occu: Housewife,
R/o. Brahmin Galli Soygaon,
Tq. Soygaon, Dist. Aurangabad.
6. Laxman S/o Tanhaji Sonawne,
Age: 40 years, Occu. Agri.,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad.
7. Bajirao S/o. Gavnaji Ghuge,
Age: 45 years, Occu. Agri.,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad.
8. Hasusabai W/o. Narayan Sonawne,
Age: 55 years, Occu. Housewife,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad.
- 8/1. Ashok S/o Narayan Sonawane,
Age: 53 years, Occu. Agri.,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad.
- 8/2. Sanjay S/o Narayan Sonawne,
Age: 45 years, Occu. Agri.,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad.

8/3. Balu @ Dnyaneshwar S/o Narayan Sonwane,
Age: 42 years, Occu. Agri.,
R/o. Nimbhora, Tq. Kannad,
Dist. Aurangabad.

8/4. Sau. Sharda W/o. Vasudeo Tonde,
Age: 51 years, Occu: Housewife,
R/o. By Vasudeo Jankiram Tonde,
Teacher, Savitribai Phule Girss School,
Tq. Kannad, Dist. Aurangabad.

8/5. Sau. Akka @ Sunanda Bhausahb Khade,
Age: 38 years, Occu: Housewife,
R/o. Kandari, Tq. Bhokardan,
Dist. Jalna.

... Respondents.

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Mr. P.N. Sonpethkar, Advocate for the Petitioners
Mr. Vikrant Palsikar, Advocate for Advocate Respondent No.1

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 15th FEBRUARY, 2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides.

2. The petitioners have challenged the impugned order passed below exhibit 1 in R.C.S. No. 144 of 2008 by 2nd Joint Civil Judge, Junior Division at Kannad.

3. Mr. Sonpethkar, learned counsel for the petitioners invited my attention to the impugned order and submitted that the suit was fixed for final argument. The trial Court has framed additional issues 6-A and 6-B without giving an opportunity of being heard to either side. It has caused serious prejudice to the rights and interest of the parties. He submitted that the Court has ample power to frame additional issues or strike out any issue even before passing the decree. But that exercise needs to be done after giving an opportunity of hearing to both the sides. He submitted that the suit came to be adjourned on number of occasions for final arguments and all of a sudden, this impugned order regarding framing of additional issues came to be passed by the trial Court. The impugned order below exhibit 1 in R.C.S. No. 144 of 2008 does not sustain in the eyes of law and it needs to be quashed and set aside.

4. Mr. Palsikar, learned counsel for respondent no.1 / contesting party vehemently submitted that the suit is old one. The Court has given sufficient opportunity and thereafter passed the impugned order and framed two additional issues after taking into consideration the amendment made in the plaint. He has also invited my attention to the copy of plaint, more particularly para

no. 3-a and 4-a. He submitted that the additional issues came to be framed in order to cover the entire controversy between the parties and to have a finding on it. No injustice is caused to the petitioners. He supported the impugned order passed by the trial Court.

5. I have considered the submissions of the learned counsel for both the sides. I have also gone through the provisions of Order XIV Rule 1 and Rule 5 of the Civil Procedure Code. There cannot be a debate that the trial Court has ample power to frame additional issues as well as strike out any issue before passing the decree. That exercise needs to be done in order to decide the controversy between the parties completely and finally. Order XIV Rule 1 speaks that framing of issues is not an empty formality. The trial Court is required to hear both the parties before framing issues or additional issues. That exercise is important.

6. On perusing the impugned order, it is very much clear that the trial Court has framed two additional issues 6-A and 6-B when the suit was fixed for final argument. It further appears from the impugned order that opportunity of hearing is not given to both the sides before framing additional issues. The impugned order has

certainly caused prejudice to the rights and interest to both the sides. It was very much necessary on the part of the learned trial Judge to extend an opportunity of being heard to both the sides before framing additional issues in view of the provisions of Order XIV Rule 1 and Rule 5 of the Civil Procedure Code. Framing of issues is a very important stage of Civil trial. It is imperative for a trial Court Judge to critically examine the pleadings of the parties before framing of issues. Order XIV Rule 2 of the Civil Procedure Code allows the trial Court Judge to go to the genesis of the *lis* and narrow down or even eliminate the controversy. For that exercise, opportunity must be given to both the sides to assist the Court to narrow down the controversy.

8. Certainly, the impugned order does not sustain in the eyes of law. It has caused serious prejudice to both parties to the suit. The impugned order needs to be quashed and set aside. It is necessary to issue directions to the trial Court to hear all the parties and then frame additional issues, if any, in order to cover the entire controversy between the parties. With this, I conclude and proceed to pass the following order.

ORDER

- (i) The petition is hereby allowed.
- (ii) The impugned order passed below exhibit 1 in R.C.S. No. 144 of 2008 passed by 2nd Joint Civil Judge, Junior Division, Kannad is hereby quashed and set aside.
- (iii) The learned 2nd Joint Civil Judge, Junior Division, Kannad is hereby directed to call all the parties to the suit before framing additional issues and give them an opportunity of being heard. After completing that exercise, 2nd Joint Civil Judge, Junior Division, Kannad may frame additional issues, if any, having regard to the amendment made in the plaint from time to time.
- (iv) The exercise of hearing of all the parties and framing additional issues, if any, shall be completed within two weeks from the receipt of the writ of this Court.
- (v) The suit is now ready for argument and it should be disposed of as early as possible within one (01) month after completion of argument.
- (vi) The rule is made absolute in above terms.
- (vii) The writ petition is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE