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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2604 OF 2018

Kamlakar Vasant Kasab and Others

PETITIONERS

VERSUS

Manual Madhukar Kasab and Others

RESPONDENTS

Mr. Rahul A. Tambe, Advocate for the petitioners

Mr. Sandeep Munde h/f Mr. Rahul R. Karpe, Advocate for
respondents No. 1 to 6

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th MARCH, 2022

ORDER :

1. The petitioners are aggrieved by order dated 25th January, 2018 passed by learned 4th Joint Civil Judge, Junior Division, Shrirampur below Exhibit-48 in Regular Civil Suit No. 264 of 2014, thereby rejecting the prayer of the petitioners for framing additional issues.

2. Regular Civil Suit No. 264 of 2018 is instituted by respondents No. 1 to 6 / plaintiffs for partition and separate possession of the joint Hindu family properties. In the said suit, 10 issues were framed by the trial court vide Exhibit-43. The

petitioners / defendants filed application No. 48 requesting to frame additional issue about they being owners of the suit property on the ground of adverse possession, which is pleaded by them in the written statement. They, therefore, proposed two issues -

“1. *Whether the suit is barred by the principle of partial partition under Order II, Rule 2 of the CPC*” and

2. *Whether the petitioners / defendants acquired ownership of the suit property by adverse possession?*”

3. The respondents – plaintiffs objected the application by filing say. The trial court framed an issue - "*Whether the suit is bad for non insertion of the properties?*" however, rejected the prayer of the petitioners – defendants to frame issue in respect of the adverse possession, as according to the plaintiffs the suit properties are the joint Hindu family properties and, therefore claim of adverse possession would not be applicable to the suit properties. The Trial Court was of the view that issues No. 1 and 2 cover the aspect raised by the defendants and the defendants have an opportunity to adduce their evidence on this aspect of issues No. 1 and 2.

4. I have heard the rival submissions of learned advocate for the petitioners and learned advocate for respondents.

5. Learned advocate for the petitioners strenuously submitted that when there is a specific averment in the written statement that the father of the plaintiffs was converted to Christianity, therefore, he has no right in the joint Hindu family properties. By further relying on the averments in the written statement that by way of adverse possession the petitioners have become owners of the suit properties, he submits that the Trial Court ought to have framed additional issue in respect of the adverse possession of the petitioners.

6. Per contra, learned advocate for the respondent - plaintiffs submitted that if the properties, which the petitioners claim to have become owners by way adverse possession, are held to be not joint Hindu family properties, then the plaintiffs will not get any relief in respect of those properties. He further submitted that in the suit filed by the respondents, the petitioners cannot claim any relief. He, supports and impugned order and urges to dismiss the writ petition.

7. Perusal of the record indicates that issues No. 1 and 2 which are framed by the Trial Court take care of the additional issues proposed by the petitioners in application Exhibit-48. The suggested additional proposed issues are covered by issues No.

1 and 2. Admittedly, the petitioners have not filed any counter claim. In that view of the matter, the Trial Court was justified in framing issue in respect of non insertion of the properties. The impugned order passed by the trial court is a reasoned order and no case is made out by the petitioners to cause interference in the same under extraordinary writ jurisdiction of this Court. The writ petition being devoid of merits is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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