

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 WRIT PETITION NO. 5020 OF 2022

SANGEETA ROHIDAS ZANJURNE
VERSUS
DNYANOBA DAULATRAO BHOSALE AND OTHERS

...
Advocate for petitioners : Mr. Satyajit S. Bora
...

CORAM : MANGESH S. PATIL, J.

DATE : 9 JUNE 2022

PC :

Heard learned advocate for the petitioner.

2. The petitioner is the original plaintiff who has filed a suit for partition and separate possession of her share in the suit property against her father and brothers.

3. The respondents contested the suit. Issues were framed, evidence was recorded and the matter reached the stage of hearing final arguments. At that stage, the learned Judge has *suo motu* passed an order on the plaint - Exhibit - 1 directing an issue to be added / framed in following words :

"maintainability of suit without seeking relief of setting-aside alienation made by defendant no. 1."

In the selfsame order, it has also granted liberty to both the sides to lead additional evidence, if they so desired.

4. The learned advocate Mr. Bora would submit that in-fact the issue sought to be added is already framed *albeit* in different words in the form of issue no. 2 which reads as under :

“Whether the suit is tenable without seeking declarations relating to decree in Regular Civil Suit No.229/2013 and Sale Deeds executed in favour of defendant No.4 to 7?”

He would submit that without extending any opportunity of being heard, the trial court has *suo motu* passed the order and has directed to frame the issue. The issue has already been framed. The parties were aware about the dispute. In view of the contention as to whether the petitioner is required to claim any declaration in respect of the alienation made by the respondent no. 1 - father, the respondents no. 4 to 7, had, in-fact, moved an application exhibit 38 seeking rejection of the plaint for being under-valued inasmuch as it did not cover the requisite court fees in respect of the declaration being claimed to take exception to the alienation made by the respondent no. 1. The selfsame Judge had rejected that application and still at the fag end has *suo motu* framed the issue which is already there on the record. Though the order per se may not have the drastic effect on the claim being put forth by the petitioner but it has the potential of protracting final decision inasmuch as the parties have now been given liberty to lead additional evidence.

5. As has been submitted by the learned advocate Mr. Bora, admittedly, the issue as to the maintainability of the suit for not claiming

a declaration in respect of the alienation made by the respondent no. 1 has already been covered by issue no. 2 (supra). Though the trial court is empowered under Order XIV of the Code of Civil Procedure to frame issue at any stage of a proceeding, the issue sought to be added seems to be superfluous or redundant as already it is covered by the issue no. 2. If this be so, the petitioner cannot be said to have been put to any prejudice much less finds her on the wrong foot.

6. Be that as it may, though it was not necessary in the strict sense but the trial court has decided to frame an issue about which both the sides already had the knowledge, therefore, I find no apparent illegality.

7. So far as the anxiety being expressed by the learned advocate for the petitioner that passing of such an order has the tendency to protract the litigation, it would be appropriate that though in substance and on merit, the petition is not maintainable, a direction can be given to the trial court to decide the suit expeditiously.

8. The writ petition is dismissed. However, the trial court shall see to it that the suit is finally heard and decided as expeditiously as possible.

[MANGESH S. PATIL]
JUDGE

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