

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

WRIT PETITION NO.7695 OF 2022

**ABDUL GAFFAR ABDUL RAHMAN
VERSUS
SAYED NAWAZALI NIZAM ALI**

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Advocate for Petitioner : Mr. Khan Mohsin Khan Masood

Advocate for Respondent : Mr. Ameya Bhatt

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04th OCTOBER, 2022

PER COURT :

1. Orders passed by learned 11th Civil Judge, Senior Division, Aurangabad, below Exhibits 75 and 76 in Special Civil Suit No.230/2017, are impugned in the present petition.

2. Petitioner is original defendant in partition suit filed by respondent/plaintiff. In written statement, petitioner has averred that plaintiff and defendant purchased the property through registered sale deed dated 13/09/2011 and after purchase, demolished old construction. Thereafter, plaintiff and defendant obtained estimate for construction of a function hall from civil engineer and after obtaining hand-loan, they started construction of function hall on the suit property. However, said construction is incomplete. The amount of hand-loan obtained by plaintiff and defendant is yet to be repaid to the persons from whom it was obtained.

3. Following issues are framed by the trial Court:-

- "1) Whether the plaintiff is entitled for partition of suit property?, If yes, what are the shares of parties to the suit?*
- 2) Whether the plaintiff proves that he is entitled for amount of Rs.5,00,000/- with interest for his share in past rents of suit property?*
- 3) What order and decree?"*

4. Defendant, after adducing his evidence, filed application Exhibit-75 for issuance of witness summons to the witnesses i.e. civil engineer who had given estimate for construction of G.N. Function Hall, to prove the documents i.e. estimate for construction and further expenditure certificate and valuation certificate of construction. Said application is rejected by the trial Court holding that considering the nature of suit and issues framed, proposed witness is not relevant.

5. Petitioner/defendant thereafter filed application Exhibit-76 for framing of additional issues. The proposed additional issues are as follows:-

- "(A) Whether defendant proves that the construction of hall is incomplete?*
- (B) Whether defendant proves that plaintiff and Defendant jointly borrowed the money from the outsiders for the expenses to be incurred for construction?*
- (C) Whether defendant proves that due to repayment of amount to other persons, the partition cannot be affected?*
- (D) Whether the defendant proves the accounts of hall?"*

6. Trial Court has rejected the said application on the

ground that plaintiff has already admitted that function hall is jointly owned and possessed by plaintiff and defendant. Hand-loan obtained by plaintiff and defendant is also admitted by plaintiff. Defendant has not filed counter-claim. Therefore, trial Court held that proposed issues are not relevant and necessary for just decision of suit.

7. I have duly considered rival submissions of learned advocate for petitioner and learned advocate for respondent, perused the grounds raised in writ petition memo and documents filed alongwith petition and the impugned orders. I am of the opinion that impugned orders passed by trial Court are not liable to be interfered with.

8. Admittedly, suit is filed for partition and separate possession. Though, defendant has averred in his written statement that plaintiff and defendant borrowed amount from their relatives for construction of function hall, the said fact is admitted by plaintiff. In that view of the matter, in absence of defendant filing counter-claim, proposed additional issues are not necessary to be framed. Without additional issues, trial Court can decide the suit for partition and separate possession.

9. In that view of the matter and taking into consideration

reasons assigned by trial Court, I am of the view that there is no fault in the orders passed by trial Court. Writ petition, being devoid of merits, is dismissed.

10. It is made clear that observations made in this order shall not influence trial Court while deciding the suit.

(NITIN B. SURYAWANSHI, J.)

SVH