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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10191 OF 2021

Nana Dada Gavhale and Another

PETITIONERS

VERSUS

Shankar Pandharinath Gavhale and Others

RESPONDENTS

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Mr. Sanket S. Kulkarni, Advocate for the petitioners

Mr. S. B. Kadu, Advocate for respondents No.1, 3 and 4

Mr. A. C. Tripathi, Advocate for respondents No.14 to 16

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th AUGUST, 2022

ORDER :

1. Challenge in this petition is to the order dated 17th June, 2021 passed by the learned Joint Civil judge, Junior Division, Kopargaon, District – Ahmednagar below Exhibit-53 in Regular Civil Suit No. 251 of 2016.

2. The petitioners filed the suit for removal of encroachment and possession of the encroached portion of the suit property. The suit was resisted by the defendants, by filing written statement. The Trial Court framed issues at Exhibit-52 on 1st January, 2020.

3. The petitioners, thereafter, filed application Exhibit-53

seeking recast of issues, thereby proposing 14 issues to be recasted. The Trial Court has rejected the application on various grounds, including that the issues already framed cover most of the proposed issues. On the same ground, proposed issues about jurisdiction and non joinder of necessary parties are refused to be framed.

4. Heard the rival submissions of the learned advocate for the petitioners and learned advocates for the respondents.

5. Learned advocate for the petitioners assailed the impugned order, contending that taking into consideration the pleadings of the parties, the proposed issues ought to have been recasted by the Trial Court. He submits that erroneous reasons are assigned by the Trial Court, while rejecting the application Exhibit-53 filed by the petitioners. He, therefore, submits that the impugned order is unsustainable and the application filed by the petitioners Exhibit-53 deserves to be allowed.

6. Learned advocates for the respondents, on the other hand, vehemently opposed the petition contending that the Trial Court has assigned proper reasons and on the basis of vague pleadings, the proposed issues cannot be recasted. They, therefore, support the impugned order.

7. Perusal of the pleadings of the parties reveals that the proposed issues, sought to be recasted by the petitioners, particularly, issues No. 1 to 4, 8, 10 and 11 are already covered by the issues framed by the Trial Court at Exhibit-52. Therefore, it is not necessary to recast issues No. 1 to 4, 8, 10 and 11 proposed by the petitioner. However, issues No. 5, 6 and 7 which are as follows :

“5. *Whether suit is within limitation?*

6. *Whether suit is barred by the principles of non joinder of necessary parties?*

7. *Whether the suit is barred by jurisdiction?”*

are required to be framed in the present case, as the said issues are legal grounds mentioned by the petitioner, in the pleadings. This Court, therefore, is of the opinion that the said issues No.5, 6 and 7 are necessary issues and they ought to be framed

8. In the result, the writ petition is partly allowed. The Trial Court shall frame issues No. 5, 6 and 7, proposed in application Exhibit-53 and proceed with the Trial from the said stage.

[NITIN B. SURYAWANSHI]
JUDGE