

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

914 WRIT PETITION NO.11299 OF 2022

**CHANDRAKANT DHULAPPA VAIRAGKAR AND ANOTHER
VERSUS
VILAS DHULAPPA VAIRAGKAR AND ANOTHER**

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Advocate for Petitioners : Mr. Sharad S. Halkude

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CORAM : SANDEEP V. MARNE, J.

DATE : 15-11-2022

PER COURT :

. The petitioner is aggrieved by the order dated 20.07.2022 passed by the Civil Judge Senior Division, Omerga rejecting his application at Exh.73 for framing of an additional issue and for deletion of issue no.1.

2. The additional issue the petitioner desires to be framed is, as to whether the plaintiff proves that the suit properties are ancestral and Joint Hindu Family properties? Initially when the issues were framed on 16.03.2017, issue no.1 was whether the plaintiff proves that the suit properties are joint family properties of the plaintiff and the defendants. On an application made by the plaintiff and the defendants for recasting of the issues, the order was passed on 16.11.2017 by which the said original issue no. 1 was

deleted. The petitioner did not challenge order dated 16.11.2017 and permitted the original issue no.1 being deleted. Now, he could not have filed an application in the year 2022 for reintroduction of the said issue as to whether the plaintiff proves that the suit properties are ancestral and joint Hindu Family Properties.

3. So far as prayer for deletion of recast issue no.1 is concerned, the same is framed as under:

‘1. Whether defendants No.1 & 3 prove previous partition of the suit properties on the day of Sankrant in the year 1972?’

4. I have gone through the plaint and the written-statement. There is a specific averment by the plaintiff that there has been no partition of the suit properties. As against this, the defendant nos.1 to 3 have filed written-statement contending that there has been partition of the suit properties in the year 1972. Therefore the aforesaid issue has been rightly framed by the trial Court and the same cannot be deleted.

5. The petition being devoid of any merits is liable to be dismissed and the same is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

GGP