

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

WRIT PETITION NO.794 OF 2019

**BALU PANDURANG DOKE AND OTHERS
VERSUS
MARUTI SAHADU MHETRE THROUGH LRS. SARASWATI MARUTI
MHETRE AND OTHERS**

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Advocate for Petitioners : Mr. Vijay Vasantrao Deshmukh
Advocate for Respondent Nos.1-A to 1-E: Mr. Balaji S. Shinde h/f
Mr. V. P. Latange
Advocate for Respondent Nos. 2 to 9: Mr. S. S. Dixit h/f Mr. A. S.
Kulkarni

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th June, 2022

ORDER :

1. The petitioners are aggrieved by the order dated 31-10-2018, passed by the learned Civil Judge, Junior Division, Karjat, District Ahmednagar, below Exhibit-88 in Regular Civil Suit No.215/2012.
2. The suit is filed for partition and separate possession of the ancestral properties and for setting aside the judgment and decree passed in Regular Civil Suit No.108/2000, on the ground of fraud. In the said suit, respective parties have appeared and plaintiff's evidence is recorded. When the evidence of defendant no.1 was being recorded, the present application Exhibit-88 was filed by the

original defendant nos.1-A to 1-E claiming that issue no.1 is inadvertently framed and there is no reason for the trial court to frame the said issue. Issue no.1 should not have been framed by the trial court and therefore, the said issue be deleted. The said application was opposed by the plaintiffs. The trial court allowed the application, this order is impugned in the present petition.

3. Heard the learned Advocate for the petitioners, learned Advocate for respondent nos.1-A to 1-E and the learned Advocate for respondent nos.2 to 9.

4. Issue no.1 framed by the trial court is as follows:

"1] Do plaintiffs prove that, the suit properties as described in plaint para nos.1-B and 1-C are the self-acquired properties of defendants nos.2 to 5 and 9?"

5. Perusal of the record indicates that it is an admitted position on record that earlier Regular Civil Suit No.108/2000 was filed by Maruti Sahadu Mhetre for partition and separate possession. In that suit, defendant nos. 6 to 10 have averred that Survey Nos.306/2/2, 306/2/1, 307/1 and 37/1/A/2 were their self-acquired properties. Finding in the said suit, on issue nos.3 to 7 are against the defendants. The said properties are mentioned in the present suit. At the time of describing the suit properties, the plaintiff has averred that suit properties 1-B and 1-C are self-acquired

properties of defendant nos.1 to 5 and 9. It is further averred that the plaintiff is not claiming any share in those properties. In that view of the matter, issue no.1 framed is not necessary.

6. The said issue casts negative burden on the plaintiff to prove that the suit properties mentioned in para nos.1-B and 1-C are self-acquired properties of defendant nos.2 to 5 and 9. In that view of the matter also, the said issue is not properly framed and ought not to have been framed. The trial court has already framed issue no.2, i.e. "whether the decree in RCS No.108/2000 was obtained by fraud."

7. The trial court has assigned proper reasons while deleting the said issue. There is no jurisdictional error or error of law committed by the trial court while passing the order impugned in the present petition. No illegality or perversity is found in the impugned order. Writ Petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI, J.]

Sameer