

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 3214 OF 2022

Reshma Reyaz Zamindar ..Petitioner
V/s.
Baban Shivram Kondhalkar
through its legal heirs and Ors. ..Respondents

WRIT PETITION 6656 OF 2022

Reshma Reyaz Zamindar ..Petitioner
V/s.
Uttam Baban Kondhalkar
and Ors. ..Respondents

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Mr. Roopadaksha Basu a/w Adv. Gaurav Jain i/b M/s. The law
Point for the Petitioner.
Mr. Tejesh Dande a/w Aniket Aghade i/b Pramod Kale for the
Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 8 JUNE 2022

P.C.

1. Writ Petition 3214 of 2020 stems from Regular Civil Suit 18 of 2008, which is instituted by the contesting Respondent for decree of specific performance. Writ Petition 6656 of 2020 is instituted by the same Respondent seeking cancellation of the transactions which according to her took place during the pendency of the suit for specific performance.

2. The Petitioner is the one of the defendants in the suits and she preferred an application under the provisions of Order XIV Rule 5 of CPC seeking framing of additional issues. The first issue touches the aspect of limitation, while the second issue centers on the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

3. Perusal of the material on record shows that in the written statement defence is taken on the basis of the provisions of the Limitation Act and the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. I am satisfied that the pleadings do raise a triable issue *qua* the provisions of the aforesaid enactments and the learned Trial Judge ought not to have made observations on the merits. A material proposition of law is asserted and the same is denied and the Trial Court ought to have framed the issues and decided the same after evidence.

4. In this view of the matter, both the petitions merit acceptance.

5. Application Exhibit 98 in Regular Civil Suit 1770 of 2014 and Application Exhibit 115 in Regular Civil Suit 954 of 2012 are allowed.

6. The learned Trial Judge shall frame the additional issues forthwith and shall proceed with the trial as expeditiously as possible.
7. The learned Trial Judge is requested to conclude the trial, if possible, within twelve months from the framing of issues.
8. Both the petitions are allowed in the aforestated terms.

(ROHIT B. DEO, J.)