



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 8 OF 2019
WITH
CIVIL APPLICATION NO. 2473 OF 2019
IN AO/8/2019

SAHEBRAO VITTHALRAO BHALSHANKAR AND ANOTHER
VERSUS
SAVITA CHARLAS PANDIT AND OTHERS

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Advocate for Appellants : Mr. Deshmukh H. D.
Advocate for Respondent Nos.1 to 5 : Mr. Jayabhar D. R.
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CORAM : S. G. MEHARE, J.
DATE : 18.12.2023

PER COURT :-

1. Heard the learned counsel for the appellants and learned counsel for the respondents.
2. The respondents were the plaintiffs and the appellants were the defendants. The plaintiffs had filed the suit for partition under Hindu Succession Act. The defendants had objected that the parties are not the Hindu by religion. They are the Christian. A specific defence was raised. The plaintiffs have given the candid admission that they observe the Christianity. Appreciating the evidence, learned Court of first instance dismissed the suit holding that the plaintiffs belong to Christian community and Hindu Succession Act is not

applicable. They were governed under the Indian Succession Act. The plaintiffs had preferred the first appeal. The First Appellate Court held that the issue as regards to the Christianity was not framed. The First Appellate Court framed two issues and remitted the case to the Court of first instance for fresh trial.

3. Learned counsel for the appellants fairly concedes that he has no serious objection about remitting the matter for fresh trial. But, the observations in paragraph No.12 of the said judgment that parties are at liberty to amend the pleadings suitably as per the discussion above is not legally correct and proper.

4. Learned counsel for the respondents would submit that opportunity needs to be granted to prove that the plaintiffs were not governed under the Christianity. Therefore, the impugned order of remand is legally correct and proper.

5. A small question that has been raised is, “whether the pleading requires the amendment to prove the issue of religion of the parties to the suit ?”

6. In the operative part of the impugned judgment and decree of the First Appellate Court, no liberty to amend the

pleadings suitably was granted. It was barely an observation in the body of the judgment. The operative order of the First Appellate Court was not in consonance with the findings recorded as regards the liberty to amend the pleadings. Considering the objections raised that the parties were not governed under the Hindu Succession Act, the Court is of the view that the necessary amendment as regards the religion of the parties is not essential. The defendants had specifically raised the objection that the parties to the suit were not governed under the Hindu Succession Act. In the circumstances, the Court is of the view that the observations recorded in paragraph No.12 would not serve the purpose for the reasons that the plaintiffs had filed a suit under Hindu Succession Act and the defendants had raised the issue of Christianity. So, necessary pleading may not be required. It is a matter of burden of proof. The Court is of the view that though the findings have been recorded as regards the liberty to amend the pleadings it is immaterial. The specific issues have been framed. That would cover the issues in dispute. Since the issue was not framed, the First Appellate Court has correctly remitted the matter to the trial Court. There is no substance in the appeal. The question as discussed above about the liberty to amend the pleadings is concerned, it has no

relevance with the remand and the plaintiffs should not take the advantage of those findings. The trial Court may consider the issue framed by the First Appellate Court granting liberty to them to lead the evidence and produce the documents strictly as regards to the religion of the parties. Hence, the following order :

ORDER

- (i) The appeal stands dismissed.
- (ii) The parties to appear before the First Appellate Court on 19.01.2024.
- (iii) R & P be returned to the Court of first instance.
- (iv) Civil Application stands disposed of.

(S. G. MEHARE, J.)

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