

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

44 WRIT PETITION NO.5880 OF 2018

**YASHWANT GYANBA MORE AND OTHERS
VERSUS
MANISHA YASHWANT MORE AND OTHERS**

...
Advocate for Petitioners : Mr. Ashutosh S. Kulkarni
Advocate for Respondent Nos.1 to 3 : Mr. N.P. Patil Jamalpurkar
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 17-01-2023

PER COURT :

. Heard.

2. Petitioners are aggrieved by order dated 23.08.2017, whereby pursuant to the application of the petitioners, the following additional issues were framed.

‘i) Whether defendants proves that gat no.157 is self acquired property of defendant no.1?

ii) Whether the suit is valued correctly?’

3. Learned counsel for petitioners submits that in a suit for partition filed by the respondent no.1, a specific case has been put up by the petitioners that the agricultural land Gat No.157 is a separate

and self-acquired property of the petitioners and cannot be a subject matter of partition, the claim based under the provisions of Section 38 (5) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the 'Act of 1950'). He would submit that considering the provisions of the Act of 1950, any issue as regards the provisions of the said Act is raised in a civil suit, then the same has to be referred to the competent authority under the said Act. He would urge that in the absence of the mention of the relevant provision in the re-casted issue, the issue of jurisdiction cannot be raised.

4. The Trial Court upon an application filed by the petitioners has framed additional issues, which have been reproduced above and has omitted the words “under the provisions of Section 38 (5) of the Hyderabad Tenancy and Agricultural Lands Act, 1950” as per the draft issues submitted by the Petitioners.

5. Petitioners insistence on the inclusion of the words “under the provisions of Section 38 (5) of the Hyderabad Tenancy and Agricultural Lands Act, 1950” in the additional issue framed by the trial Court, is misplaced. In a suit for partition it is the defence of the petitioners that the property being the self-acquired property cannot be the subject matter of partition. Upon the query by this

Court as to the prejudice which is being caused by non-inclusion of the above words , the learned counsel for the petitioners submits that upon the issue being framed, the petitioners will be entitled to move an application before the Civil Court seeking to refer the matter to the competent authority under the provisions of Act of 1950.

6. In my opinion, for the purpose of filing an application it is not necessary that the grounds on the basis of which independent rights in the suit property are claimed are required to be included in the additional issues framed. Issues are framed when the material proposition of law and fact is raised by one party and is denied by the other. In the present case, the claim for partition has been denied by the petitioners on the ground that one of the property is self-acquired property and considering the same, the issue has been rightly framed by the trial Court. As far as the application proposed to be filed by the petitioners for seeking a reference to the competent Court is concerned, without going into the merits of the application or the provisions of the Act as to the maintainability of such an application, suffice to state that for preferring such an application the issues are not required to be gone into and the necessary pleadings will be taken into consideration.

7. For the reasons stated above, there is no merit in the writ petition and stands dismissed.

(SHARMILA U. DESHMUKH, J.)

GGP