

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.306 OF 2013

1. Trymbak s/o. Bhagu Madan,
2. Hariram s/o. Trymbak Madan,
3. Dnyaneshwar s/o. Trymbak Madan,
All Occu. Agri., R/o. Warud (Bk),
Taluka Jafrabad, District Jalna.

.. Appellants
(Original Plaintiffs)

Versus

1. Ashok s/o. Kisan Madan,
2. Damodhar s/o. Kisan Madan,
3. Sugdeo s/o. Kisan Madan,
4. Manik, s/o. Bhagu Madan,
5. Dagadabai w/o. Tukaram Jadhav,
6. Muktabai w/o. Sakharam Andhare,
All Occu. Agri., R/o. Warud (Bk),
Taluka Jafrabad, District Jalna.

.. Respondents
(Original Defendants)

Mr. Rajiv B. Deshmukh, Advocate for Appellants

CORAM : S. G. MEHARE, J.

DATE : 14-09-2023

PER COURT :-

1. Heard the learned counsel for the appellants.
2. Learned counsel for the appellants would submit that the learned trial Court did not frame the issues properly. However, for the first time in the appeal before the learned District Court, objections were raised that the issues were not properly framed. The burden was on the defendants that there was a partition, but that burden was shifted on them by framing the negative issue

that they have to prove that there was no partition. He would submit that this is a substantial question of law.

3. Perused the judgment and particularly the issues framed by the learned trial Court and the first Appellate Court, which has relevance in this appeal, which reads thus;

“Whether plaintiffs proved that the suit properties are yet to be partitioned?”

4. The case of the plaintiffs was that there was a partition, and they wanted to reopen the earlier partition. In pursuance of the pleadings, the Court is of the opinion that both Courts have considered the relevant facts covered by the above issue and framed the issues correctly. The plaintiffs also lead the evidence on the issues framed. There are two concurrent judgments against them. The appellants appear to have searched a new ground that the issues were not framed correctly. Reading the issues framed, the Court is of the view that no prejudice is caused to the present appellant as it did not leave any disputes undecided. Both Courts have properly considered the controversy and the facts in issue. Non-framing a specific issue, as the appellants have argued, does not directly and substantially affect the rights of the appellants. The Court did not find any substantial question of law involved in the appeal. Hence, the appeal stands dismissed at the admission stage.

(S. G. MEHARE)
JUDGE