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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13215 OF 2022

Bhausahab Sarjerao Solunke and Others

PETITIONERS

VERSUS

Vishnu Dajiba Mhaske and Another

RESPONDENTS

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Mr. Chetan T. Jadhav, Advocate for the petitioners

Mrs. M. V. Narwade h/f Mr. V. P. Narwade, Advocate for
respondents No.1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th MARCH, 2023

ORDER :

1. The petitioners are aggrieved by order dated 29th November, 2022 passed by learned Civil Judge, Junior Division, Bhokardan below Exhibit-33 in Regular Civil Suit No. 113 of 2015, thereby partly allowing the application filed by the petitioners – defendants for recasting and settlement of additional issues.

2. In application Exhibit-33, the petitioners – defendants had proposed total 7 additional issues. At the time of arguing, learned advocate for the petitioners has submitted that issues No.5, 6, and 7 are necessary issues, which are required to be

framed, for effective adjudication of the dispute between the parties.

3. Heard learned advocate for the petitioners and the learned advocate for the respondents. Perused the documents on record and the impugned order.

4. Trial Court, while partly allowing the application, has proceeded to delete issues No. 5 and 6 framed by his predecessor at Exhibit-24. Those two issues are -

"5. Whether the defendants have given proper boundaries of 4 Are land?

6. Whether the defendants have given proper boundaries of 6 Are land?"

5. Trial Court, while deleting these two issues, has not assigned any reason, except stating that considering the nature of the suit, issues No. 5 and 6 are not appropriate. Another reason assigned by the Trial Court is that it is not necessary for the person claiming injunction, to prove title of the suit land. Therefore, from the tenor of the impugned order, it appears that the Trial Court has rejected the prayer in the application, however, fact remains that the impugned order is an unreasoned

order and, therefore, the same cannot be sustained.

6. In the result, the writ petition is allowed. Impugned order dated 29th November, 2022 passed by learned Civil Judge, Junior Division, Bhokardan below Exhibit-33 in Regular Civil Suit No. 113 of 2015 is hereby quashed and set aside. The matter is remanded back to the Trial Court for fresh consideration of application Exhibit-33 on merits, after hearing both the parties. Said exercise shall be completed by the Trial Court within four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE