



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12881 OF 2022

Aashika Hitesh Mehta

..... Petitioner

Vs.

The State of Maharashtra thr. GP & Ors.

..... Respondents

Mr.V. S. Kapse i/b Mr. Kamlesh Mishra for the Petitioner.

Mr. Abhijit Sarwate a/w. Ms. Hardev K. Aidhen, Ms. Srushti Chavan and Mr. Ajinkya Udane for Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 19 AUGUST 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 16/9/2022 rejecting the petitioners application filed below Exhibit 120 seeking rejection of the plaint under the provisions of Order 7 Rule 11 of C.P.C. read with Order 1 Rule 10 read with section 7 of the Family Court Act. By the said application the petitioner sought rejection of the suit on the ground of absence of cause of action and want of jurisdiction on the ground that in the petition prayers were sought as regards the right of pre-emption of the respondent in respect of 25% share of the petitioner and for sale of the property in which apart from the respondent-husband, the mother of respondent was also the co-owner. It was sought to be contended that as the mother-in-law came to be impleaded in the proceedings

the suit was outside the jurisdiction of the Family Court as envisaged by section 7(1)(c) of the Family Court Act.

3. This Court was informed that during the pendency of the proceedings evidence has commenced and subsequent to the order under challenge being passed an application has been filed for framing additional issue on the basis of amendment. This application has been filed on 12/10/2022 and has not yet been adjudicated. Several decisions were cited across the bar by the learned counsel for the parties, in support of the contention as regards the jurisdiction or absence of jurisdiction of the Family Court. However, in my view, it is not necessary to go into the question as to whether the Family Court has the jurisdiction to decide the proceedings for the reason that the application in question filed under the provisions of Order 7 Rule 11 of CPC seeks rejection of plaint and it is settled that the plaint cannot be rejected in part. As such without going into the merits of the case and considering that there is an application filed by the petitioner for framing additional issue as to whether the Family Court has jurisdiction to entertain and decide the right and share in the partition in respect of the suit property, the proper course would be to direct the Family Court to frame the said issue and consider the issue of jurisdiction along with other issues already framed.

4. Learned counsel appearing for the respondent concedes that the issue as regards the jurisdiction be framed however the liberty may be granted for making an application for

recasting of the issue of jurisdiction as the contention is that only by reason of mother in law being added the Family Court would not have the jurisdiction, I do not see any impediment in granting the said liberty as prayed.

5. In view of the above consensus, the Writ Petition is disposed of by directing the Family Court to frame the additional issue of jurisdiction as framed in the application dated 12/10/2022 subject to the application, if any, filed by learned counsel for respondent seeking recasting of the issue to include as to whether by reason of the mother-in-law being impleaded as a party, the Family Court would not have the jurisdiction to decide the rights and shares in the suit property. Needless to clarify that all rights and contentions of both the parties are expressly kept open. It is clarified that the trial Court has to consider the issue uninfluenced by the observations made in the order dated 16/9/2022.

SHARMILA U. DESHMUKH, J.