

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5787/2022

SHREE BRIJMOHAN RATHI
VS
MEENADEVI BRIJMOHAN RATHI AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.R. Agrawal, Advocate for the petitioner
Mr. A.R. Deshpande, Advocate for respondent no. 4/Caveator.
Respondent nos. 1 to 3 are served.

CORAM : A. S. KILOR, J.

DATED : 13/06/2023

Heard.

2. The order dated 27.07.2022 passed by the learned Joint Civil Judge Senior Division, Amravati on Application Exh. 61 filed by the respondent under Order XI Rule 12 r/w. Rule 14 of the Civil Procedure Code, 1908 (for short the "C.P.C.") directing thereby the plaintiff/petitioner to produce the documents as per Order XI Rule 12 of the CPC, is under challenge in this writ petition.

3. The suit is for partition, separate possession and injunction. The plaintiff claims that Govardhan Rathi was son of Shivkaran Rathi and brother of Rajaram Rathi. Whereas, it is the case of the defendant no. 4 in written statement that Govardhan Rathi was son of Hiralal Rathi

and not Shivkaran Rathi.

4. The defendant no. 4 accordingly, moved an application under Order XI Rule 12 r/w. Rule 14 of the C.P.C. praying for discovery on oath about the documents of Govardhan Rathi, namely, Death Certificate, Election Card, Driving Licence and PAN card of Govardhan Rathi and production of the same. The said application is opposed by the petitioner by filing his say.

5. The learned trial Court allowed the application and directed the plaintiff to bring the documents as per Order XI Rule 12 of the C.P.C..

6. After going through the contents of the impugned order, it is evident that though, the application was under Order XI Rules 12 and 14, the trial Court has not made any observation about rejection of the request of the respondent no. 4 for discovery on oath about documents relating to Govardhan Rathi. Furthermore, the trial Court has not observed anything about the possession of the documents or the satisfaction about the requirement of these documents for deciding the issue involved in the suit. The trial Court has also not considered the difference between both the provisions, namely, Order XI Rule 12 and Order XI Rule 14 and the consequence of non-compliance of any direction under the said provisions.

7. In the circumstances, though the learned Counsel for the respondent has strongly opposed the present writ petition on the ground that the order makes it clear that it was passed under Order XI Rule 12 of the C.P.C., I am not convinced for the reasons recorded hereinabove. Accordingly, I pass the following order:-

(a) The petition is partly allowed.

(b) The order dated 27.07.2022 passed in Special Civil Suit No. 212/2020 is hereby quashed and set aside and Application Exh. 61 is directed to be decided afresh after considering the scope of both the provisions, namely, Order XI Rule 12 and Order XI Rule 14 of the C.P.C. and its prerequisites.

(c) Needless to mention that considering the age of the defendant no. 4, the learned trial Court is directed to decide the Application Exh. 61 within a period of two weeks from the next date of the Suit.

JUDGE