



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8357 OF 2023

Kalpana Suhas Suryavanshi And Others

VERSUS

Jayant Suryaji Salunkhe And Another

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Mr. C. S. Joshi, Advocate for the Petitioners (VC)

Mr. M. S. Kulkarni, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 04, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. In this Petition, Petitioners/Plaintiffs have raised objection with regard to the framing of issues by the Trial Court in suit for partition.

3. It is the contention of learned Counsel for Petitioners that the issues framed by the Trial Court are fanciful and irrelevant and not in consonance with real controversy between parties. It is his submission that the issue of limitation does not arise in the present suit as there is no dispute made with regard to the fact that there was denial of

partition sought by the Plaintiffs from Defendants. It is further submitted that merely because Defendants raise issue about valuation of the suit, it is not necessary for the Court to frame such issue. He further argued that the learned Trial Court has failed to take into consideration the submissions of the Plaintiffs while deciding application for recasting of the issues sought vide Exh. 114. According to him, issue no. 8 with regard to the disqualification of Plaintiff No. 5 is framed without pleadings to that effect and without their being any substance therein.

4. Learned Counsel for Respondents supported the framing of issues by the Trial Court. It is his submission that once the dispute is raised by way of filing of the written statement, the Court is obliged to frame the said disputed issues.

5. There cannot be any dispute with the proposition of law that issue must be confined to the material question of facts or law. Whenever any substantial dispute is raised by the Defendants, on facts or law issue is required to be framed. Defendants

herein have raised issue of bar of limitation and it is a matter of evidence as to whether the suit is within limitation. As far as the issue about non-joinder of necessary parties, though it is the contention of learned Counsel for the Petitioners that Saroj by executing will bequeathed her share in favour of her two children, in exclusion of Sachin, her third child, but since suit is for partition at least at this stage it cannot be accepted that Sachin is not necessary party to suit.

6. So far as issue of valuation is concerned, it is a dispute between the Court and Plaintiffs. Such issue can be raised at any state of hearing of suit or even while delivering judgment, appropriate directions can be issued to make deficit Court fees good. Plaintiffs would be always at liberty to satisfy the Court with regard to correctness of valuation.

7. With regard to issue no. 8 about disqualification of Plaintiff No. 5 for reason performing marriage under Special Marriage Act, this Court finds marriage under said Act would not affect

her right in the suit property and as such, there is no reason or justification for framing such issue.

8. Needless to say that burden would be at respective parties to prove their contentions before Trial Court.

9. Having regard to the pleadings of the parties, Petition deserves to be allowed partly. Issue no. 8 framed by the Trial Court is set aside. Rest of the issues to be decided by Trial Court as per law.

10. Petition is disposed of in above terms.

(R. M. JOSHI, J.)

Malani