



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

956 WRIT PETITION NO. 10717 OF 2023

SHIVSAMB BAPURAO PATIL AND OTHERS
VERSUS
GOPINATH MASHNAJI GORGILE AND OTHERS

Mr. S. P. Katneshwarkar, Advocate for the petitioners
Dr. R. R. Deshpande h/f Ms. P. R. Deshpande, Advocate for respondent
no.1.

CORAM : R. M. JOSHI, J.

DATE : 22nd NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to order dated 06/05/2023 passed below Exhibit 21 in R.C.S. No. 34/2023 wherein application filed by defendant nos.1,3,5 and 7 for framing the preliminary issue in respect of valuation and pecuniary jurisdiction under Order XIV Rule 2 of the Code of Civil Procedure came to be rejected.

2. Learned counsel for the petitioners submits that since the issue of jurisdiction of the Court is raised, it is just and necessary that the said issue decided as a preliminary issue. It is his further contention that for want of jurisdiction, the Trial Court would not be in a position to decide merit of the case.

3. Learned counsel for the respondent drew attention of the

Court to order XIV Rule 2 of the CPC which according to him the Trial Court from framing any issue as preliminary issue unless it can be disposed of on issue of law only.

4. At this stage it would be relevant to refer to Order XIV Rule 2 of the CPC which reads thus;

"2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

5. There cannot be any dispute about the fact that the issue of pecuniary jurisdiction and validation of the suit involves the recording of evidence. Needless to say that unless parties have consensus on the point of valuation, the cannot be said that the issue is purely a question of law. In view of the above provision, it can be said that the issue can be decided as preliminary issue, provided the same involves question of law only. Meaning thereby, any issue which requires determination of facts and could be decided on evidence, such issue cannot be determined

as preliminary issue.

6. Having regard to the above facts and provision of Order XIV Rule 2 of the CPC, the observations made by the learned Trial Court in paragraph No. 4 of the impugned judgment cannot be faulted with.

7. The petition stands disposed of. Needles to say that the Trial Court would frame the issue of pecuniary jurisdiction and to decide the same at appropriate stage.

(R. M. JOSHI, J.)

ssp