

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16897 OF 2024

Kanchan Vilas Kulkarni & ors.

.Petitioners

Versus

Suhas Haribhau Kulkarni & ors.

.Respondents

Ms. Manisha Devkar a/w. Mr. Shankar Katkar & Ms. Siddhi Patil,
Advocates, for the Petitioners

None for the Respondents

CORAM : S. M. MODAK, J.

DATE : 26.11.2024

P. C.

1. Heard Ms. Devkar, learned Counsel for the Petitioners.
2. The order dated 09.08.2024 passed below Exhs. 363 & 364 in R.C.S.No. 149 of 2012 by the learned Civil Judge, Senior Division, Pandharpur, thereby rejecting two Applications filed by Defendant Nos. 7 & 8 respectively is under challenge. I have read those Applications which are at page Nos. 25 & 27. Prior to considering the prayer clauses, it is necessary to consider the issues which are already framed which are at page Nos. 88 & 89. These

issues were framed on 13.07.2012 by the trial Court and later on, the trial Court on 24.06.2019 framed additional Issue Nos. 2A and 2B which are in respect of Gat No. 276/2. It is standing in the name of the present Petitioners/ Original Defendant Nos. 7 & 8. The burden is cast on the Plaintiffs. The Plaintiffs are expected to prove that this land is purchased in the name of these Petitioners by Defendant No. 3 and that too from the income of joint family of Defendant Nos. 1 to 6. These additional issues were framed on the basis of the averments made in the plaint.

3. Further, additional issues were framed on 02.05.2024 which are at page No.89. The Defendant No. 7 is having grievance about Issue No. 1B. It talks about the proof by the present Petitioners that the property at Sr. No. 2D is their self acquired property. There is prayer for deleting this issue. In fact, this issue was framed on the basis of the Order passed by the trial Court on 08.05.2024 which is at page No. 94. Admittedly, this Order is under challenge.

4. Her submission is that actual issues are re-casted later on. It is not true because re-casted issues were framed on 02.05.2024 which are at page No. 89. Be that as it may. For the reasons given below, I

do not find any merit in the submissions advanced by learned Counsel for the Petitioners.

5. As per those Applications, the prayer made by the present Petitioners in Exh. 63 are as follows :-

- (i) To delete Issue No. 1 B.
- (ii) Instead of that the Petitioners want the Respondents/Plaintiffs to prove that the said property was purchased from the funds of the joint family whereas, Defendant No. 8 has requested for review of an Order passed on Exh. 356 dated 02.05.2024.

6. During submissions, it is submitted on behalf of learned Counsel for the Petitioners that she is insisting upon suggested issues but she is only insisting upon burden of Issue No. 1 B (which is at page No. 89). The Suit is for declaration and partition. If Defendant Nos. 7 & 8 have pleaded that it is their self acquired property, they are bound to prove the same. The trial Court observed on the basis of pleadings, issues are framed and burden is cast on relevant party. The issue before the trial Court is “*whether that property is the joint family or self acquired*”. I do not think that the trial Court has committed any error while rejecting

those Applications.

7. It is also submitted on behalf of learned Counsel for the Petitioners that if the Application below Exh. 356 which is at page No. 90 is moved by the Plaintiffs, there was no prayer made in the Application in respect of re-casting of Issue No. 1. In spite of that the Court has re-casted it as per Order dated 08.05.2024 (page No. 94). The trial Court rejected request of the Plaintiff for re-casting but at the same time, re-casted Issue No. 1. It is the duty of the Court to frame proper issue based on pleadings. It should be done by considering the provisions of the Evidence Act. The trial Court cannot be blamed.

8. If the issues are decided against the Petitioners, they are at liberty to challenge the same by way of an appropriate relief.

9. At this stage, no interference is required. No observation about merits. Suit be decided on the basis of evidence.

10. The Writ Petition stands dismissed.

(S. M. MODAK, J.)