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

WRIT PETITION NO. 3415 OF 2024

Appasaheb Mahadev Aswale and Ors. .. Petitioners

Versus

Gangubai Hinduroa Aswale and Ors. .. Respondents

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- Mr. Drupad Patil a/w. Mr. Ajinkya Patil, Advocate for Petitioners.
 - Mr. Sandeep Koregave, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2024.

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioners and Mr. Koregave, learned Advocate for Respondents.

2. Writ Petition challenges twin orders dated 09.01.2023 and 18.08.2023 passed in Application filed below Exhibit “68” and subsequently reviewed by the learned Trial Court.

3. Application was to the effect that the learned Trial Court ought to have framed an additional issue in addition to the issues framed on 08.03.2018. The issues framed by the learned Trial Court are at Exhibit “C” - page No.42 of the Writ Petition which call upon the Plaintiffs to prove the Plaintiffs’ possession over the Suit property as also the obstruction by the Defendants and whether the Plaintiffs would be entitled for injunction.

4. Application below Exhibit “68” was filed by the Defendants for a direction for framing an additional issue calling upon the Plaintiffs to prove the existence of the Suit property in view of the fact that in paragraph No.1 of the Suit plaint, the Plaintiffs have described the Suit property as being Gat No.602/1-B/2/-A, ad-measuring 0 H, 97 R and having assessment of 0 Rs.74 paise and asserted that this Suit property being agricultural land is the subject matter of the Suit proceedings filed by the Plaintiffs for injunction. Admittedly Plaintiff has not given the boundaries of the Suit property according to the Defendants.

5. By virtue of the impugned orders, the learned Trial Court has rephrased the issue proposed by Defendants, or rather framed an additional issue calling upon the Defendants to prove that the Suit property is not in existence. This is primarily in view of the fact that it was the Defendants’ principal case that the Suit property described in paragraph No.1 of the Suit plaint is infact not in existence.

6. To buttress his above submissions, Mr. Patil appearing for Defendants has drawn my attention to paragraph No.2 read with paragraph No.5 of the Suit plaint. On reading of the aforesaid two paragraphs, it is seen that the Suit property is described without any boundaries. That apart, it is the Defendants’ case that the Suit property is not supported by any cogent documentary evidence, *inter*

alia, with respect to any sub division having taken place of the alleged original Gat No.602 as it stood originally.

7. Mr. Patil would submit that originally Gat No.602 was nomenclatured as Revision Survey Nos.724 and 658 and was having a much larger area. Though reference to Revision Survey Nos.714 and 658 is also given by the Plaintiffs in paragraph No.2 of the Suit plaint, the basic contention of the Defendants is that the Suit property has not been identified and described by the Plaintiffs. Considering the issues framed by the learned Trial Court on 08.03.2018, it is clearly seen that in so far as issue No.1 is concerned, it would clearly imply that the Plaintiffs will also have to prove the existence of the Suit property as stated paragraph No.1 of the Suit property as the said issue is very widely worded.

8. Hence the Defendants filed Application below Exhibit “68” resultantly leading to framing an additional issue requiring the Plaintiffs to prove the existence of the Suit property. Instead the learned Trial Court by the impugned order called upon the Defendants to prove that the Suit property is not in existence in view of the Defendants’ pleadings. Such a negative burden could not have been cast upon the Defendants.

9. In that view of the matter, after hearing the parties and considering the pleadings referred to herein above, both the impugned

orders dated 09.01.2023 and 18.08.2023 are clearly not sustainable and are therefore quashed and set aside. Application below Exhibit 68 filed by the Defendants is also dismissed with a clarification given herein that the issues framed by the learned Trial Court on 08.03.2018 are appropriate and substantive and no further issue/issues are required to be framed. All contentions of Defendants are expressly kept open so as to effectively cross-examine the Plaintiffs on the Defendants' case pleaded in the written statement in response to the plaint strictly in accordance with law.

10. Needless to state that all contentions of the Plaintiffs with respect to proving the existence of the Suit property are also expressly kept open so as to prove the same strictly in accordance with law when the Plaintiff proves his possession of the Suit property.

11. However, at the joint request of both the learned Advocates, considering that Regular Civil Suit has been filed in the year 2014 and pending, the learned Trial Court is requested by this Court to dispose of the Suit proceedings as expeditiously as possible and in any event preferably within a period of six (6) months from today.

12. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless if it is utmost necessary due to any emergency / exigency.

13. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

14. I am informed that the next date before the learned Trial Court is 13.03.2024. Both the parties are directed to appear before the learned Trial Court with an authenticated copy of this order on 13th March, 2024 and seek further directions for adjudication of the Suit.

15. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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