



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

16 WRIT PETITION NO. 13827 OF 2024

Gaurav Abhaykumar Shah
Died Thr Lrs Trishala Abhay ShahPetitioner

VERSUS

Dnyaneshwar Vishnu Khandade & othersRespondents

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Mrs. Anjali Dube, Advocate for the Petitioner.

CORAM : R. M. JOSHI, J.
DATE : 20th JANUARY, 2025.

PER COURT :

1. This Petition takes exception to the order of refusal by learned Trial Court to frame two additional issues as sought to be framed vide application Exhibit 102.
2. Parties are referred to as Plaintiff and Defendants for the sake of convenience.
3. Defendant Nos. 6 and 7 filed application Exhibit 102 for framing additional issues. Following additional issues were sought to be framed by these Defendants :-

I. Whether the plaintiff proves that the commercial building situated over suit property B was constructed by defendant no. 1 out of consideration received from sale of land at Happalgaon in the year 1997 ?

II. Whether the present suit is bad in law and untenable for non inclusion of all joint family properties ?

III. Whether the defendant proves that the alienation of suit property A to the extent of 81 R by virtue of sale deed no. 3553/2002 and 2906/2009 were for the purpose of construction and discharge of debts ?

Learned Trial Court allowed the application partly and framed following additional issue :-

Whether the defendant No. 6 & 7 proves that the alienations of suit property A to the extent of 81R. by virtue of sale deed no.3543/2002 and 2906/2009 were for the purpose of construction and discharge of debts ?

Since the Trial Court has refused to frame two other issues, this Petition.

4. Learned counsel for Petitioners submits that in view of the amended provision of Order 14 Rule 3 of Code of Civil Procedure, issue can be framed on the basis of documents. In order to submit this, it is her contention that now documents are placed on record by Defendants which indicate that the issues sought to be framed are necessary to be framed by the Trial Court.

5. There cannot be any dispute about the fact that essentially the issues are to be framed by the Court on the basis of pleadings of the parties. Though issue with regard to maintainability of the suit is sought to be framed, perusal of written statement does not show that any issue of maintainability was even raised by these Defendants. If no such pleading is raised, question of framing the issue does not arise. Though it is contended that in view of Rule 3 of the Code of Civil Procedure the contents of the document produced by parties can become a ground for framing issue, however, this is coupled with Rule 5 which permits the Court to frame additional issues before passing decree. The said provision is made in order to ensure that whenever there is issue with regard to the contents of any document, after it is proved, such issue can be entertained and decided by Court before passing judgment.

6. In the instant case, Defendants are seeking to frame the issues without pleadings and on the basis of documents which are yet to be proved. This Court, therefore, finds no substance in the contention of learned counsel for the Petitioner. Apart from this, perusal of issues framed by the Trial Court indicates that Issue No. 3 which is framed sufficiently takes care of the first issue sought to be framed by the Petitioners/original Defendant Nos. 6 and 7.

7. Learned Trial Court has rightly taken into consideration these aspects and rejected the application. In exercise of writ jurisdiction and for want of any perversity, no interference is required in the impugned order. Hence, petition is dismissed.

(R. M. JOSHI)
Judge

dyb