

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2420 OF 2025

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Anant Nana Bhagat
(since deceased through LRs) and Ors. ...Petitioners

vs.

Vilas Nana Bhagat ...Respondent

Mr. Rohit Joshi, for the Petitioners.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 06, 2025

P.C:

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to an order dated 19th November, 2024 passed by the learned District Judge, Panvel-Raigad, whereby an application preferred by the petitioners for framing issues under Order 41 Rule 25 of the Code of Civil Procedure, 1908 came to be rejected.
3. The petitioners had instituted a suit for declaration and injunction. In the said suit, an issue as to whether there was a prior partition in accordance with an arbitration award dated 8th February, 1991 was raised. The trial Court settled the issues.
4. By a judgment and decree dated 27th September, 2011 the suit came to be dismissed. The trial Court, inter alia, returned findings that the plaintiffs failed to establish that the suit properties were the ancestral properties and there was partition in terms of arbitration award dated 8th February, 1991 and the same was

binding on the plaintiffs and defendants.

5. Being aggrieved, the petitioners preferred an appeal before the District Court. In the appeal, an application was preferred for framing the issues under Order 41 Rule 25 of the Code, asserting that in the written statement, it was the contention of the defendants that the suit properties were self-acquired properties of late Nana Bhagat and late Nana Bhagat had executed a Will dated 16th October, 1993 and that the arbitration award was obtained by the plaintiffs, by fraud. Therefore, the application for framing additional issue and determination of those issues by the trial Court under Order 41 Rule 25 of the Code.

6. By the impugned order, the learned District Judge was persuaded to reject the application observing that the case did not fall within the ambit of Order 41 Rule 25 of the Code. The trial Court has not omitted to frame and decide the issues which arose for determination.

7. Mr. Joshi, learned counsel for the petitioners, submitted that it was the specific case of the defendants that the suit properties were self acquired properties of Nana Bhagat and the arbitration award dated 8th February, 1991 was obtained by fraud. Thus, the trial Court ought to have framed the issues. However, the trial Court returned the findings on the premise that the plaintiff had to prove

the arbitration award. In fact, the onus lay on the defendants to prove that the arbitration award was obtained by fraud.

8. I have perused the proposed issues and the issues which were settled and decided by the trial Court. Almost all of the proposed issues are covered by the issues which were settled and decided by the trial Court. Since the plaintiff had claimed that the suit properties were ancestral properties, initial burden was on the plaintiffs to establish the said fact. It was also the specific case of the plaintiff that the Will was got executed from Nana Bhagat by misleading him and the said Will was not binding on plaintiffs. Once the plaintiffs established primary facts then the onus would have shifted on the defendants.

9. In any event, the issues framed and decided by the trial Court cover the disputed questions which are now sought to be raised by the petitioners. It cannot be said that the trial Court had omitted to frame or try the issues which arose for determination so as to warrant a remand under Order 41 Rule 25 of the Code. Therefore, this Court does not find that the Appeal Court committed any error in rejecting the application. Thus, the impugned order does not warrant interference in exercise of supervisory jurisdiction.

10. The petition stands dismissed.

(N. J. JAMADAR, J.)