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

WRIT PETITION NO. 5206 OF 2024

Tulshiram Babu Patil and Ors.

... Petitioners

V/s.

Parshuram Savlaram Patil and Ors.

... Respondents

Ms. Vaishnavi M. Gujarathi for the Petitioners
Mr. Rohit D. Joshi for Respondent Nos. 1 and 2
Mr. Vinod S. Chate for Respondent Nos. 3 and 4

CORAM : ALOK ARADHE, CJ.

DATE : 09 JULY 2025

P.C. :

1. In this Petition filed under Article 227 of the Constitution of India the Petitioners have assailed the validity of the order dated 21 December 2023, passed by the Trial Court, by which application preferred by the Appellant under Order 14 Rule 5 of the Civil Procedure Code was rejected.

2. Facts giving rise to filing of this Petition briefly stated are that the Respondents/Plaintiffs filed a suit for declaration of title, mandatory injunction and damages. The aforesaid Civil Suit was filed on 27 January 2016. The Petitioners filed a written statement on 12 June 2018. The Trial Court, by an order dated 8 June 2021, framed the issues. Thereafter, the

evidence of the Plaintiffs was recorded. After the evidence of the Plaintiffs was recorded, the Petitioners moved an application under Order 14 Rule 5 of the Civil Procedure Code by which an additional issue in respect of encroachment made by the Plaintiffs on the land of the Defendants was sought to be framed. The Trial Court, by impugned order dated 21 December 2023 has rejected the aforesaid application. Hence, this Petition.

3. I have heard the learned Counsel for the parties at length.

4. The Trial Court in the impugned order has noted that the written statement filed by the Petitioners was never treated as a counter-claim. It is pertinent to note that application under Order 41 Rule 5 has been filed after the evidence of the Plaintiffs has been recorded. The additional issue is not in respect of the subject matter of the Suit of the Plaintiffs. The order passed by the Trial Court neither suffers from any jurisdictional infirmity nor any error apparent on the face of the record. However, it is clarified that the aforesaid order shall not preclude the Petitioners from instituting a separate Suit.

5. Accordingly, the Writ Petition is disposed of.

(CHIEF JUSTICE)