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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4236 OF 2025

Vijay Jaganprasad Gautam ... Petitioner

vs.

Mrs. Nirmala Ajay Vallabh alias Gautam since ... Respondents
deceased through Lrs and Ors

Mr. Rakesh Agrawal a/w. Mr. Sandeep N., for Petitioner.
Mr. Vishwabhushan Kamble for Respondent Nos. 4a to 4e.

CORAM : GAURI GODSE, J.

DATED : 10th JULY 2025

ORDER:

1. This petition is filed by the plaintiff to challenge the order passed by the learned City Civil Court rejecting the plaintiff's prayer for a decree on admission. While dismissing notice of motion of the plaintiff, the learned judge has issued directions to the plaintiff to include all the properties held by the family of plaintiff and defendants in the suit, failing which a further direction is issued that the plaint would be rejected.

2. Learned counsel for the petitioner/ plaintiff submits that these directions issued by the learned City Civil Court is beyond the scope of notice of motion filed under Order XII Rule 6 of the Civil Procedure Code, 1908('CPC'). He submits that at the most application for decree on admission could have been rejected but while deciding the said application, directions issued in clause (2)

of the operative order of the impugned judgment were beyond the scope of the application filed in the suit. Learned counsel for the petitioner submits that the petitioner is therefore pressing this petition to a limited extent, to challenge the directions in operative part in clause (2).

3. Learned counsel appearing for respondent nos. 4(a) to 4(e) submits that in the written statement, the said respondents contended that apart from the suit flat, there are other joint family properties which needs to be included in the suit. He therefore submits that the said respondents be granted liberty to raise appropriate contentions by taking appropriate steps, including liberty to raise the said grievance in the suit on behalf of the said respondents.

4. The suit is filed seeking partition and separate possession of the flat no. 305 which is described as suit property in paragraph no. 4 of the plaint. In response, defendant nos. 4(a) to 4(e) contended that there are various other properties which belong to the joint family. In view of these rival pleadings, defendant nos. 4(a) to 4(e) would be entitled to raise appropriate contentions in the trial including taking appropriate steps for agitating the grievance with regard to non inclusion of the other joint family properties. Thus, while deciding the application under Order VII Rule 12 of the CPC, directions issued in the operative part of

clause (2) of the impugned judgment would not be sustainable. The plaint cannot be rejected on the said ground of non inclusion of the other joint family properties as contended by defendant nos. 4(a) to 4(e). Hence, the impugned order would require interference to the extent of setting aside the directions issued in the operative clause (2) of the impugned judgment.

5. Writ Petition is therefore partly allowed by passing the following order:

I) Operative part in clause (2) of the impugned judgment dated 13th February 2025 in Notice of Motion No. 4177 of 2019 in Special Civil Suit No. 110 of 2018 is quashed and set aside.

II) Dismissal of Notice of Motion No. 4177 of 2019 stands confirmed.

III) Defendant Nos. 4(a) to 4(e) are at liberty to raise appropriate contentions with regard to non inclusion of the other joint family properties by adopting appropriate remedy as permissible in law, including raising contentions in the trial in the pending suit.

6. The rival contentions of the parties on the merits of the suit are kept open.

7. Writ Petition is disposed of in the aforesaid terms.

(GAURI GODSE, J.)