



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8322 OF 2024

Govind s/o. Nilkanth Joshi
Age : 64 Years, Occ. Agri.,
r/o.Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

..Petitioner

Vs.

1. Mukund s/o. Rameshwar Bhutada,
2. Shrikrishna s/o. Nilkanth Joshi,
3. Keshav s/o. Nilkanth Joshi

..Respondents

Mr.A.M.Nagarkar, Advocate for petitioner
Mr.Kapil Moray, Advocate h/f. Mr.P.V.Shinde, Advocate for respondent no.1
Mr.N.C.Garud, Advocate for respondent no.3

CORAM : AJIT B. KADETHANKAR, J.
DATE : MARCH 11, 2026

ORDER :-

In a suit filed for declaration of the sale deed as invalid, an application came to be filed by the petitioner/plaintiff seeking framing of preliminary issue and to decide the same immediately. The application was objected by the respondents/defendants. Learned trial court rejected the application on 29.09.2023. Learned trial court observed that the preliminary issue can be framed in a suit after considering the pleadings of the parties in the written statement. Learned trial court has also recorded findings that even if preliminary

issues are framed, it is incumbent on the part of the court to give findings on all the issues in the suit. With this finding, the application below Exh.39 came to be rejected by learned trial court. The order is of 29.09.2023 which is under challenge. The Writ Petition was filed in November, 2023. There is no stay granted by this court.

2. Learned counsel for the petitioner would submit that the contents of paragraph 14 of the written statement would speak that the defendants remained with no controversy with the prayers averred by the plaintiff in the suit. He would submit that by way of paragraph 14 in the written statement, the defendants have denied that the plaintiff, defendant nos.2 and 3 are legal representatives of the deceased - Shakuntala and Nilkanth. He submits that learned trial court was under obligation to frame preliminary issue and dispose of the suit on the basis of the admission itself. He submits that learned trial court has not considered this aspect of the matter and without going into the scheme provided under Order 14 of C.P.C., rejected the application. He would submit that it was rightful for the learned trial court to frame preliminary issue, to try the preliminary issue first and decide the suit.

3. Mr.Garud, learned counsel for respondent no.3 would support the order passed by the trial court as also the argument advanced by the petitioner.

4. With the able assistance of learned counsel for the parties, I have gone through the Writ Petition compilation and the reply filed by the respondents/defendants.

5. Paragraph 14 of the written statement is reproduced as follows:-

१४) वादीचे दावा कलम २ मधील कथन की, "वर कलम नं. १ मधील मिळकत वादी व प्रतीवादी कं. २ व ३ यांचे वडिलोपार्जित मालकी व कब्जेवहीवाटीची आहे. वादी व प्रतीवादी नं. २ व ३ यांचे जनक वडिल निळकंठ आत्माराम जोशी हे दिनांक १४/०७/२००६ रोजी मयत झालेले आहे. वादी व प्रतीवादी क. २ व ३ यांचे जनक वडिल मयत झाल्यानंतर दावा कलम १ मधील मिळकत वारसा हक्काने वादी व प्रतीवादी क. २ व ३ व त्यांची जनक आई शकुंतला निळकंठ जोशी यांचे नावे झाली. वादी व प्रतीवादी क. २ व ३ यांची जनक आई शकुंतला निळकंठ जोशी दि. ०८/००० २०१२ रोजी मयत झाली आहे. मयत निळकंठ आत्माराम जोशी व मयत शकुंतला निळकंठ जोशी यांना वादी व प्रतिवादी क. २ व ३ यांचे पश्चात अन्य कायदेशीर वारस नाही." हे वादीचे कथन धादांत खोटे व लबाडीचे असून ते कथन प्रतिवादी हे स्पष्टपणे व तंतोतंत नाकारीत आहे वादीने स्पष्टरीतीने शाबीत करावे.

6. On plain reading of the said paragraph, it is crystal clear that the contentions of the plaintiff as to 'admission by the defendants' is apparently misconceived. The recitals in the written statement itself show that the defendant has candidly denied the

pleadings in paragraph 2 of the plaint. As such, the application itself was misconceived. I do not find any infirmity in the order passed by learned trial court while rejecting the application. On the other hand, learned trial court has consciously observed the principle governing framing of issues and deciding them by learned trial court. For ready reference, the observations made by learned trial in paragraphs 7 and 8 in the impugned order reproduced as follows:-

7. In so far as framing of preliminary issue is concerned, as per Order 14 Rule 1 of CPC issues are of two kinds i.e. issues of fact and issues of law. As per Rule 5, at the first hearing of the suit the court shall after reading the same and written statement, if any and after examination under Rule 2 of Order X and after hearing parties or their pleaders ascertain upon what material propositions of facts or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. Rule 2(1) of Order 14 of CPC provides that, notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Whereas sub-rule (2), provides where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

08. Aforesaid provisions of law made it clear that, notwithstanding suit may be disposed of on preliminary issue and pronounce judgment, but considering the same clause firstly court is bound to pronounce judgment on all issues instead on any preliminary issue. In such circumstances, even though it is assumed for the sake of argument that, defendant No. 1 has denied that, plaintiff and his siblings or mother are not legal heirs of original owner of suit property, it doesn't mean to require to frame issue of law and decide it first. It is crystal clear from the claim of plaintiff that, only required for this court to decide the right of plaintiff to seek perpetual injunction, defendants' contravening acts and entitlement of plaintiff for such perpetual injunction, so beyond that this court will not decide anything. In this background plaintiff's claim to frame legal issue and decide the same first is not acceptable, thereby, application is devoid of merit, so rejected.

7. In view of the above, I am of the opinion that no case is made out for interference in the impugned order. The petition is liable to be dismissed.

8. The Writ Petition is dismissed.

[AJIT B. KADETHANKAR, J.]

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KBP