

ORDER BELOW EXH. 20 IN
REGULAR CIVIL APPEAL NO.112/2019

Mriganayna Raje Mrigendra Ghatage etc

Vs

Arihant Pramod Talera etc 1

(CNR No.MHPU01-002012-2019)

The application moved by the appellant no. 1 under Order 14 Rule 5 of the Code of Civil Procedure. By virtue of present application, it is contention of the appellant that respondent no. 1 predecessor in title had filed civil suit for specific performance of contract of alleged agreement dated 20.8.1989 bearing SCS No. 1197/1995. On the basis of pleading learned trial court has framed in all seven issues. The trial court has decreed the suit on 5.12.2018. Being aggrieved of it, present appeal came to be filed.

2. In the civil suit it is contention of plaintiff that he has been made aware by the defendants that competent authority under ULC Act has declared an area of 14,290.00 sq. meter as surplus land and an area admeasuring 4083.00 sq. meter was retained to defendant. It was also decided that defendant / appellant make an application under Section 20 and 21 of Urban Land Ceiling Act for exempting surplus land under ULC Act. So it is admitted fact that suit land comes under the provision of Urban Land Ceiling Act. The defendants have denied and admitted that no steps were taken by the plaintiff and defendants for exempting the suit land from the said ULC Act. So considering the pleadings of both the parties the appellant intend to frame the issue to that effect as to whether the suit is maintainable in view of provisions under Urban Land Ceiling Act, whether the suit is maintainable without taking permission of owner i.e. Central Government through Cantonment Board Pune or

Cantonment Rules and Regulations Act and under ULC Act. It is contention of appellant that the issue goes to the roots of the case. So also, issue enlightened the law point. Hence, prayed to frame the issues.

3. The respondent resisted the application vide say at Exh. 21. It is contention of the respondent that application is not maintainable. It is not legal and bonafide one. It is filed just to delay the matter. It is contention of the respondent that present appellant have filed joint written statement before learned trial court. So also present appeal jointly filed by them. Appellant nos. 2 and 3 have filed written notes of argument on 9.10.2020 and appellant no. 1 have filed separate application under reply through same advocate just to delay the hearing of present appeal.

4. The trial court has framed total seven issues at Exh. 19. On 16.2.2002 also framed additional issues as 3a, 4a and 4b. It has given its finding on all the issues and decreed the suit on 5.12.2018. Appellant no. 1 has concealed the material fact. The issues which are proposed by the appellant no. 1 are already been covered by issue no. 2 which is framed long back on 16.2.2002. There is no requirement at all to frame additional issues or recast the issue as prayed by appellant.

5. The trial court directed the appellants to comply for no objection certificate from competent authority for execution of sale deed within one month from the date of judgment. Appellants do not comply with the said directions. On the contrary have filed present appeal just to linger the execution of decree.

6. The application moved by appellant under Order 14 Rule 5 of The Code of Civil Procedure is not maintainable as the power can only be exercised during the pendency of the suit and before passing the decree. During the period of last 13 to 18 years there was no grievance by the appellant regarding non framing of proposed issue. The proposed issue have already been covered by issue no. 2 framed by learned trial court. Therefore, proposed issues are not required to frame. On the above grounds, prayed to reject the application.

7. Heard learned advocate Shri. S.S. Patil for appellant and Shri. M.N. Joshi for respondent nos. 1 and 2.

8. Perused the record, the pleadings of the parties before trial court, issues framed by trial court at Exh. 19 and evidence thereof.

9. Following points arises for my determination and my findings thereon are as follows :

Sr. No.	Points	Findings
1	Does application is maintainable under Order 14 Rule 5 of Code of Civil Procedure?	No
2	Whether the issue is required to frame regarding the maintainability of the suit in view of bar under ULC Act?	Yes, as per final order.
3	What order?	As per final order

REASONS

As to Point Nos. 1 and 2 :

10. It is evident from the pleadings that the plaintiff / respondent

have filed SCS No. 1197/1995 for specific performance of agreement to sell dated 20.8.1989 against defendant / appellant.

11. The defendant / present appellant come with the defence that provisions of Section 269 of U, UA, UC are applicable to Pune in the year 1989 onwards and mandatory compliance of the said provisions with respect of the agreement dated 20.8.1989 was required to be complied with. The suit of the plaintiff is hit by the non compliance of the aforesaid mandatory provisions of Income Tax Act. It is further contention of the defendant in written statement that competent authority under Urban Land Ceiling and Regularization Act, 1976 has declared 14,290.00 sq meter out of total land as surplus land and late Yuvarani Durgaraje, now a successor was allowed to retain the area of 4083.0 sq. meter.

12. It is also defence of the defendant by way of amendment dated 3.5.2008 (Exh. 74) that Central Government of India through Defence Estate Officer are the owners of the suit property and are necessary party to the present suit. The plaintiff has not made the Central Government of India as party. Hence, suit is not maintainable in the eyes of law for want of adding necessary party.

13. It is evident from the record that the defendant / appellant has moved the application at Exh. 75 under Order 1 Rule 3 of Code of Civil Procedure, *inter-alia* prayed to add Central Government of India through Defence Estate Officer as a defendant. The said application came to be rejected by learned trial court on 21.4.2008. Said order has not challenged by the defendant till today. It is clear that in SCS No. 1197/1995 Central Government is nowhere party. It

is further evident from the record that the amendment below application at Exh. 74 regarding the ownership of land beneath property, by Central Government of India is allowed by learned trial court, however, rejected the prayer to add Central Government as necessary party to the suit. In short, it is admitted fact that Central Government is owner of land beneath structure.

14. Now, I turn to the legal aspect of the present application. Appellant has moved present application under Order 14 Rule 5 of the Code of Civil Procedure *inter-alia* prayed to recast the issue. The provision of Order 14 Rule 5 empowers the court to amend the issue or frame additional issue as may be necessary for determining the matters in controversy between the parties, it also empowers the court to strike out any issues which appears to be wrongly framed or introduced. The court can exercise above powers under Order 14 Rule 5 before passing the decree. It is nowhere case of appellant that they have moved application before trial court to frame additional issues as prayed by him in the present application. It seems that he has not availed remedy under Order 14 Rule 5 of the Code of Civil Procedure before passing the judgment and decree in SCS No. 1197/1995. Now in appeal he cannot avail remedy under these provisions.

15. Appellant has challenged the decree passed by learned trial court by way of present appeal. As I earlier stated that he has not availed remedy available under Order 14 Rule 5 of Code of Civil Procedure before trial court. It does not mean that he have lost opportunity to pray for framing of additional issues. Having regard to point urged, it is essential to discuss provisions of Order 41 Rule 23, Rule 24 and Rule 25 of the Code of Civil Procedure.

16. **Order 41 Rule 23** speaks that appellant court may if it thinks fit direct the trial court what issue or issues shall be tried in the case where the matter is remanded. It would happen where court from whose decree, an appeal is preferred has disposed of the suit upon preliminary point and decree is reversed in appeal. Considering the facts of the present case in hand, above provision is not applicable.

17. The provision of **Order 41 Rule 24** empowers the appellate court to resettle the issues if necessary to finally determine the suit where evidence on record is sufficient to pronounce the judgment. The scope of this rule is limited to the cases in which evidence upon the record is sufficient to enable the appellate court to determine the suit when both the parties have adduced evidence on the point raised in appeal. The appellate court can record the findings under this rule even though no issue have framed on it.

18. The provision of **Order 41 Rule 25** of the Code of Civil Procedure empowers the court to frame the issues and refer them for trial to the court whose decree appealed from. The court can exercise this jurisdiction where court from whose decree the appeal is preferred has omitted to frame or try any issue or to determine any question of fact which appears to the appellate court essential to the right decision of the suit upon merits. In these eventualities appellate court may frame issues and refer the same for trial to the court from whose decree, the appeal is preferred and in such a case directed the court to take additional evidence required. This rule refers to the cases in which the evidence upon the record is not sufficient to enable the appellate court to determine the suit.

19. At the outset, considering the contention of appellant in the present application coupled with the evidence led by the parties before trial court, I hold that the question raised by appellant regarding the bar of the suit under provisions of Urban Land Ceiling Act is pure question of law. The parties have already adduced evidence pertaining to the issue nos. 2 and 4a. The issue raised by the appellant by virtue of present application is pure question of law. There is no necessity to lead evidence on issue of law and accordingly it is not justified to remand the matter for that purpose. The court can very well by exercising the jurisdiction under Order 41 Rule 24 (referred above) of Code of Civil Procedure can resettle the issue for the just decision of the case to determine the suit finally. Accordingly, I answered point no. 1 in negative and 2 in affirmative in the light of provision of Order 41 Rule 24 of the Code of Civil Procedure.

As to Point No. 3 :

20. At this stage learned advocate for appellant have filed some citations on record along-with Exh. 24. The issues enumerated in all the citations is that appeal is a continuation of the suit. There is no dispute about the said preposition of law.

21. By exercising the jurisdiction under Order 41 Rule 24 of the Code of Civil Procedure appellant court can record the finding under this rule even though no issue have been framed on it. At the outset, in my considered view there is no need to remand the matter to the trial court to take evidence on issue referred, but to resettle the issue and give finding on it under Order 41 Rule 24 of the Code of Civil Procedure. Hence, the order :

ORDER

1. The application is allowed as follows :
 - a) Issue raised by appellant is hereby resettled as follows
 - b) Whether the suit is maintainable in view of bar laid down in the provision of Urban Land Ceiling Act?
2. The parties are at liberty to advance their argument on the new issue resettled.

Pune
Date: 05/02/2021

(A. D. Lokhande)
Adhoc District Judge – 6, Pune

CERTIFICATE

I affirm that the contents of this PDF file Judgment / order are same word for word as per original Judgment.

Name of the Steno	:	Mrs. B.J. Khandre, Steno(Grade-I)
Name of the Court	:	Ashwini D. Lokhande, Ad-hoc District Judge-6 and Assistant Sessions Judge, Pune.
Date	:	5.2.2021
Judgment / order signed by		
Presiding Officer on	:	5.2.2021
Judgment /order uploaded on	:	5.2.2021