IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12485 OF 2015

Dattatraya Narhari Jathar and others … Petitioners
Vs.
Narayan Balkrishna Pinge … Respondent

Mr. Nitin P. Deshpande for Petitioners.

**CORAM : R. G. KETKAR, J.**
**DATE : DECEMBER 15, 2015**

**P.C.** :

Not on Board. At the request of Mr. Deshpande, learned Counsel for petitioners, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the judgment and order dated 08.10.2015 passed by the learned Civil Judge, Junior Division, Wai below exhibit-195 in Regular Civil Suit No.43 of 1999. By that order, the learned trial Judge rejected the application made by the defendants for recasting and framing additional issues.

3. Mr. Deshpande submitted that on 27.06.2002, the learned trial Judge framed issues at exhibit-41. Defendants have set up counter claim and have claimed exclusive ownership over the suit property. In view thereof, on 27.07.2004, the learned trial Judge has framed additional issues. He submitted that issue No.1 reads as under:

> "1. Whether the plaintiff proves his exclusive ownership over the suit property?"

4. Defendants suggested that instead of plaintiff proves his exclusive ownership in the suit property, the said issue should be recast in the

following terms:

> "1) Whether the plaintiff proves his sole ownership over the suit property? and
>
> 2) Whether the plaintiff proves that the sale deed dated 04.03.1997 is legal and valid?"

5. After considering the pleadings of the parties in the plaint, written statement, counter claim and written statement for counter claim, by the impugned order, the learned trial Judge rejected the application by observing that mere replacing of word does not change implied meaning. It will not cause any prejudice to the findings of the issues as stated by defendants in the application. The issues suggested in the application are already covered by the issues framed below exhibit-41 and issues are interlinked with each other. The learned trial Judge, therefore, rejected the application.

6. After considering the material on record, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

**(R. G. KETKAR, J.)**

*Minal Parab*