

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5846 OF 2016

Shahajahan Ishaq Choudhary ... Petitioner
Vs.
Shakuntala Raju Shetty and another ... Respondents

Mr. Vivek K. Gupta for Petitioner.
Ms Ranjana Parekh for Respondents.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 11, 2016

P.C. :

Not on Board. At the request of Mr. Gupta, taken up for admission.

2. Heard Mr. Gupta, learned Counsel for the petitioner and Ms Parekh, learned Counsel for respondents at length.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 11.01.2016 passed by the learned Judge, presiding over Court Room No.13 of the Court of Small Causes at Bombay below exhibit-125 in R.A.E. Suit No.564/1267 of 1992. By that order, the learned trial Judge rejected the application filed by the defendant No.2 for framing following additional issue:

“Whether the defendant No.2 proves that he is a tenant in respect of the suit premises?”

4. In support of this Petition, Mr. Gupta strenuously contended that respondent No.1 has instituted R.A.E. Suit against respondent No.2-defendant No.1 and the petitioner. In that Suit, issues were framed on 30.06.1998. He submitted that during the pendency of that Suit,

petitioner has instituted R.A.D.Suit No.834 of 2005 for declaration of his tenancy rights in the suit premises. Both the Suits are clubbed together and common evidence is recorded. In R.A.E. Suit filed by the respondent No.1, petitioner has contended that he is a tenant. In view of Order XIV of C.P.C., the learned trial Judge is required to frame issue as to whether defendant No.2 proves that he is a tenant in respect of the suit premises. However, for the reasons recorded in paragraph 9, the learned trial Judge has rejected the application. He submitted that as respondent No.1 had raised objection regarding limitation for filing the Suit, it is necessary to frame issue as suggested by the petitioner.

5. On the other hand, Ms Parekh supported the impugned order. She submitted that after closing of evidence, arguments were advanced by the plaintiff in R.A.E. Suit and defendant in R.A.D. Suit. Apart from that, she submitted that for the reasons recorded in paragraph 9 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. As noted earlier, respondent No.1 has instituted Suit for eviction. Petitioner has instituted Suit for declaration of his tenancy rights. It is not disputed that one of the issues framed in R.A.D. Suit is whether defendant No.2 has established his tenancy rights. It is also not in dispute that both the Suit are clubbed together. Evidence is also recorded together in the Suits. In paragraph 9, the learned trial Judge has observed that both the Suit are going to be decided by the common judgment and order. Separate issue is not required to be framed in the present Suit. As one of the issues framed in the R.A.D. Suit is about declaration of tenancy rights of defendant No.2, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

7. 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) of C.P.C.

(R. G. KETKAR, J.)

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