

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7637 OF 2016

Masood Ahmed Mohd. Usman
And Ors

...Petitioners

Versus

Mujib Ahmed Mohd. Mustafa
And Ors

...Respondents

....

Mr.Anilkumar R. Patil, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 20th July, 2016

P.C.

1. Not on board. At the request of Mr. Patil taken up for admission.
2. Heard Mr. Anilkumar Patil, learned Counsel for the petitioners, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.2 and 3' have challenged the judgment and order dated 2.2.2016 passed by the learned District Judge-1, Malegaon below Exhibit-12 in Civil Appeal No.114/2015. By that order, the learned

District Judge allowed the application Exhibit-12 filed by the respondents No.1 to 7 for dismissing the appeal on the ground of locus of the petitioners/appellants in the appeal.

4. Mr. Patil submitted that defendants No.2 and 3 are L.Rs of Shamshul Haq s/o Suleman and they are tenants in common. He submitted that in fact the petitioners are questioning the locus of respondents No.1 to 7 to institute the suit. He submitted that the Appellate Court committed serious error in allowing the application and dismissing the appeal as not tenable.

5. I have considered the submissions advanced by Mr. Anilkumar Patil. I have also perused the material on record. While allowing the application the Appellate Court noted that the controversy in respect of ownership of respondents No.1 to 7 was already decided in Regular Civil Suit No.115/1998, 262/2001, C.A. No.22/2007, Regular Civil Suit No.210/2009, 211/2009 and 212/2009.

6. The learned District Judge also referred to the decision of Civil Appeal No.22 of 2007, wherein the learned District

Judge had held that petitioners (defendants No.2 and 3) were unauthorizedly collecting the rent. Mr. Patil was not in a position to show that the said order was challenged. In view thereof, I do not find that the learned District Judge committed any error in allowing the application and dismissing the suit on the ground of locus to maintain the appeal. No case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Writ Petition fails and the same is dismissed. Liberty is reserved to the petitioners to adopt appropriate proceedings for establishing their title. If such proceedings are initiated, all contentions of respondents No.1 to 7 including maintainability thereof are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)