

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.22822 OF 2016

Anant Parshuram Devdhar and Ors.] ... Petitioners

Versus

Smt. Bhaggibai Ramchandra Kambli]
(Deceased) and Ors.] ...Respondents

Ms. Trupti Bharadi for Petitioners.
None for Respondents.

Coram: N.M. Jamdar, J.

Dated: 08 September 2016

P.C. :

1. The petitioners have challenged the order dated 21/06/2016 (erroneously mentioned as 21/06/2015) wherein the application taken out by the petitioners below Exh.130 under Order 15 Rule 3 of CPC was rejected.

2. The learned Counsel for petitioners submitted that the issues as framed, should have been decided under the provisions of Order 15 Rule 3 of CPC as the defendant no.1 has expired and her heirs are not contesting the suit. The learned Civil Judge has held that merely because there is no contest, the contention of the plaintiffs cannot be straightaway accepted and the issues need to be tried on merits. There cannot be any error in this approach. The learned Counsel for petitioners submitted that the learned Judge, in the impugned order, has placed negative burden on the petitioners in respect of the tenancy claim of the deceased defendant no.1. The issues have been framed in the suit wherein the Court has framed the issues as to whether the defendant no.1 proved that she is a tenant and whether she proves that rent was agreed at Rs.20/- per month. Therefore these issues clearly have casted burden on defendant no.1 to prove the case of tenancy and the amount of rent to be paid. Therefore, the burden to prove the tenancy of defendant no.1 cannot be stated to be on the petitioners even though there may be a stray observation in the impugned order. In view of the matter in which the issues are framed, the apprehension expressed by the learned Counsel for petitioners is not warranted.

3. Considering the factual position, the learned Civil Judge will give priority to the disposal of the suit and dispose of the same at an earliest possible date. Writ Petition is accordingly rejected.

(N. M. Jamdar, J.)