

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3297 OF 2016

Bhagwat S/o Ganpati Shingare & another	Petitioners
Versus	
Anand S/o Nandkishor Tiwari & others	Respondents

Mr. S.S. Choudhary advocate for the petitioners

CORAM : **RAVINDRA V. GHUGE, J**
(Date : 21st June, 2017.)

PER COURT :-

1 The petitioners, original defendants in RCS No.77/2010 are aggrieved by order dated 4.11.2015, by which Application Exh.33 filed by the petitioners has been rejected.

2 Shri S.S. Choudhary learned counsel appearing on behalf of the petitioners strenuously submits that Exh.33 was filed on the basis of the pleadings of the defendants in the Written Statement that the suit property was an evacuee property. The entire land in survey No.353 being an evacuee property, was purchased by the father of the defendant Ganpati Jayawant Shingare under a Sale Certificate No.69/EVC/135/A from the Government, by paying full consideration in the light of the Judgment of the Court in RCS No.

227/65. Hence, the defendants pray that the Civil Court should frame an issue as to whether it has jurisdiction to entertain the suit or declaration of ownership over an evacuee property.

4 I have considered the submissions of Shri S.S. Choudhary and I have gone through the petition paper book with his assistance.

5 It is the contention of the defendants that when the suit property is an evacuee property, no suit would be maintainable by the plaintiffs, claiming a title or ownership on the property. However, the Trial Court has observed in the impugned order that the petitioners have not produced any document to indicate that the suit property is an evacuee property. The Trial Court, has, further, observed that, as this defence has been taken by the defendants – petitioners herein, in their written statement, an issue will to be cast to that effect and an opportunity of proving the defence will have to be afforded to them. It is also observed that the Trial Court would be framing an issue in the light of the objections raised by the petitioners in their written statement and they would be permitted to lead evidence for proving their contentions.

6 Considering the above, I do not think that the trial Court has committed any error by declining to frame an issue to be tried exclusively as a preliminary issue. When the defendants have not placed on record any document, the Trial Court has rightly observed that the issue would be framed subsequently and while recording evidence, the defendants would have an opportunity of placing documentary evidence on record.

7 Considering the above, this petition is dismissed.

(RAVINDRA V. GHUGE, J)