

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

WRIT PETITION NO. 3174 OF 2011

Shri Ramchandra Sakharam
Jogale

..Petitioner.

Vs

Shri Shantaram Deu Bhovad and
Ors.

.. Respondents

Mr. Sagar Joshi , Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 23/02/2017**

PC:

1. Heard Mr.Sagar Joshi, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 1.4.2011 passed by the learned Civil Judge, Jr.Dn.,Lanja below Exhibit-112. By that order, the learned trial Judge has framed preliminary issue as regards pecuniary jurisdiction.
3. Mr. Sagar Joshi submitted that the petitioner has instituted Regular Civil Suit No.4 of 2000 against the defendants for perpetual injunction restraining defendants no.1 to 7 from causing obstruction to his possession. The defendants filed written statement and also set up counter claim and shows valuation for the purpose of jurisdiction and court-fee at Rs. 1,35,000/-. The learned trial Judge passed order on 23.3.2007 by observing that as counter claim set up by defendants under

Order VIII, Rule 6 exceeds the pecuniary limits of the jurisdiction, the defendants are at liberty to seek declaration in appropriate court. The learned trial Judge, therefore, directed that counter claim filed by the defendants shall be treated as written statement and not as counter claim.

4. The defendants, therefore, filed application Exhibit-112 for framing preliminary issue as regards pecuniary jurisdiction. By the impugned order, the learned trial Judge allowed the application Exh.112 and framed preliminary issue as regards pecuniary jurisdiction.

5. Mr. Joshi submitted that pending this petition, pecuniary jurisdiction of the Court of Civil Judge, Jr. Dn., is enhanced to Rs five lakhs and, therefore, it is no longer necessary to frame preliminary issue as also decide the same.

6. In view thereof, Mr. Joshi seeks permission to withdraw this petition with liberty to file application before the trial Court for recalling the impugned order passed on 1.4.2011 thereby deleting issue of pecuniary jurisdiction. I find that the request made by Mr. Joshi is reasonable as it cannot be disputed that the court of Civil Judge, Jr, Dn, is having pecuniary jurisdiction upto Rs. Five Lakhs. Hence, Petition is allowed to be withdrawn with liberty as prayed for . Order accordingly.

(R.G.KETKAR, J.)