

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7103 OF 2017**

Brijmohan P Sekhsaria & Ors	...Petitioners
<i>Versus</i>	
Shantilal Amritlal (deceased) & Ors	...Respondents

Ms Snehal R Modi, *for the Petitioners.*
Mr PK Dhakephalkar, Senior Advocate, *i/b Jaydeep Deo, for*
Respondents Nos.1B, 1C, 3A & 3B.

CORAM: G.S. PATEL, J
DATED: 14th November 2017

PC:-

1. The Writ Petition is directed against an order dated 17th November 2017 of the Appellate Bench of the Small Causes Court, Mumbai. By that order the Appellate Bench thought it fit to frame an additional issue, i.e., whether the Plaintiffs prove that they are the owners of the suit premises.

2. Ms. Modi for the Petitioners argues that issue no.3 framed before the Trial Court was sufficient. That issue was worded thus:

"3. Whether the Plaintiffs further prove that they are executors of the will of the deceased Parmeshwarlal D Sekhsaria and they are the owners of the suit premises ?"

3. The difficulty with the issue was originally framed is that it tied or locked the question of the Plaintiffs' title to a testamentary instrument. It is well settled that proceedings for probate do not decide questions of title and a Will does not on its own confer title. The question would be whether Parmeshwarlal was the owner. Once this is shown by whatever evidence is available to the Plaintiffs, then the rest would follow. I have no manner of doubt that issue no.3 originally framed did require, at a minimum, to be re-framed or recast. If the Appellate Court thought it appropriate to frame an additional issue, I do not see how it can be faulted for this. Further the Appellate Bench has been careful to place parties at liberty to either continue with the available evidence or to lead additional evidence.

4. It is also well settled that issues can be framed or recast at any time before final judgment is delivered. There is no prejudice whatsoever caused to the Plaintiffs by the order under challenge.

5. There is no substance to the Writ Petition. It is rejected. No costs.

(G. S. PATEL, J.)