

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 12682 OF 2016**

|                               |                |
|-------------------------------|----------------|
| Shri Kishor S. Tandale & Ors. | ...Petitioners |
| <i>Versus</i>                 |                |
| Shri Kiran Jhilu Khot & Ors.  | ...Respondents |

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**Mr Mandar V Sawant**, *for the Petitioners.*  
**Mr Kapil Shetye**, *for the Respondent.*

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**CORAM: G.S. PATEL, J**  
**DATED: 20th November 2017**

**PC:-**

1. Heard.
  
2. The Writ Petition is entirely without merit. It assails an order of 22nd January 2016 by which the Trial Court framed an additional issue thus;

**“(1) Whether the plaintiffs prove that they are landlords of the defendants?”**

3. This is an ejectment action. Obviously the landlord-tenant relationship is fundamental to any such action. Once a party proves that he is the owner of the premises, a tenant’s denial of the title of the landlord has consequences well-known to law.

4. In any case, framing an additional issue or recasting an issue is always possible at any stage, and the law in that regard is settled. It is always open to the plaintiff to argue even at the final hearing that the issue does not and cannot arise or that the burden of proof is on the defendant in view of evidence and the pleadings.

5. The impugned order is not one that determines the rights of the parties. There is no question of placing the burden on the defendants to show that the plaintiffs are *not* the owners of the property. What additional Issue No.1 does is to require the plaintiffs to establish a landlord-tenant relationship. If this relationship has been admitted either in pleadings or evidence, the landlord may well urge that burden placed on them is fully discharged and the onus will shift to the defendants to show otherwise. The interests of both, the plaintiff and the defendants are adequately protected. The Writ Petition is, subject to these observations, rejected with no order as to costs.

**(G. S. PATEL, J)**