

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

WRIT PETITION NO. 11348 OF 2017

Natvarsinh Ramsinh Rathod	...	Petitioner
V/s.		
Fatesinh Mohansinh Chauhan & Ors.	...	Respondents

Mr.Manoj M. Badgujar for the Petitioner.
None for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th DECEMBER, 2017.

P.C. :

- 1] Heard learned counsel for the Petitioner.
- 2] The petition is taken up at the stage of admission, as the issue involved is a very short one.
- 3] The application filed by the Petitioner for framing of additional issues on the basis of averments made in the written statement of the Respondents came to be rejected, hence the instant petition.

4] The perusal of the averments made in the written statement, in paragraph Nos.29 and 30, clearly go to show that the Defendant has raised the specific plea of being in adverse possession of the suit property and having become the owner by way of adverse possession. In view of these two specific pleas, it was necessary for the trial Court to frame these requisite issues. However, the trial Court has rejected the said application. Hence on the face of it also, the impugned order of the trial Court calls for interference even without issuing the notice to the Respondent.

5] No prejudice is going to be caused to the Respondent framing of these additional issues, as they are based on their own pleadings. Moreover, Respondents are getting an opportunity also to lead evidence to substantiate their own pleas. As these issues are arising from their own pleadings and therefore, they are not taken by surprise being very much aware of their own case. Hence as such there is no reason to issue the notice to the Respondents.

6] The Writ Petition is therefore allowed. The impugned order passed by the trial Court is set-aside.

7] The Application of the Petitioner for framing of additional issue Nos.(b) and (c) is allowed.

8] The trial Court is directed to frame following two issues as additional issues:

- “(b) Whether Defendants prove that Defendant No.(1) was lawfully put in possession over the suit land and his possession has been protected over the suit land as per Sec.53-A of The Transfer of Property Act, 1882?*
- (c) Whether Defendants prove that Defendant No.(1) has become owner of the suit land by way of adverse possession?”*

9] The Writ Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]