

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10623 OF 2017**

Mr. Abhijeet Mohite ..Petitioner
Versus
Mrs. Mansi Mandar Date & Ors. ...Respondents

Mr. Prasad Dani, Senior Counsel i/b. Mr. Sagar G. Talekar, for the petitioner.
Mr. Pankaj Thatte, for the respondent Nos. 1 & 2.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 8th December, 2017.**

P.C. :

1. Heard respective parties. Rule. Rule made returnable with the consent of the parties.
2. The petitioner happens to be original defendant No.5 in Special Civil Suit No.106 of 2016. The petitioner in the application below Exhibit 25 prayed for framing an issue as follows :-

“Whether the Hon'ble Court has Jurisdiction to entertain, try and dispose off the present suit and jurisdiction of this Court Expressly or Impliedly Barred”.

The said application is rejected by an order dated 19.8.2017. Hence, the above Writ Petition.

3. Both the parties have demonstrated the facts of the case.

The learned Court has observed in para 8 of the order that the jurisdiction of the Civil Court is barred under Section 149 of the Maharashtra Regional & Town Planning Act, 1966. It appears that without framing the issues, the Court has proceeded to decide the petition on merits.

4. The learned counsel for the respondent-plaintiff also fairly submitted that a preliminary issue to that effect needs to be proved and parties would be at liberty to adduce evidence.

5. Without going into the other aspects of the matter, the order dated 19.8.2017 deserves to be quashed and set aside with necessary directions to the learned Joint Civil Judge, Senior Division, Alibag to frame preliminary issue, directing the parties to adduce evidence and decide the preliminary issue within four months from the date of receipt of this order. Rule is made absolute. The Petition stands disposed of in view of the above directions.

(SMT. SADHANA S.JADHAV, J.)