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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13368 OF 2016

Govind Bhausaheb Kadam	..Petitioner.
V/s.	
Jayashree Khetmal Bafna & Anr.	..Respondents.

Mr.Nitin Dalvi for the Petitioner.
Mr.Vilas Tapkir for Respondent No.1.

CORAM : N.M.Jamdar, J.

DATED : 12 January, 2017

ORAL ORDER

Heard the learned counsel for the parties. In view of the narrow controversy involved, by consent of the parties the petition is taken up for final disposal. The learned counsel for the parties jointly state that for the disposal of the petition, other respondents are not necessary.

2. The Petitioner has challenged the order passed by the District Judge, Pune dated 3 October, 2016 wherein the application below Exhibit 16 was disposed of. Application Exhibit-16 in Civil Appeal No.299/2010 was filed by Respondent No.2, Appellant before the District Court. The suit bearing Civil Suit No. 615/2003

was filed by Respondents-landlord for eviction of Smt. Baswanti Bhausahab Kadam from the suit premises. The suit was dismissed by the learned Small Causes Court Judge, Pune on 8 February, 2010 against which an appeal has been filed by the Respondents. The said Baswanti expired on 21 July, 2014 during the pendency of the appeal. In view of her death, an application was filed by the Respondents that since there are no legal heirs, the Nazir of the Court be appointed as the guardian of the suit premises. The application was also filed by the Petitioner placing on record the decision in Civil Appeal No.880/2001 wherein a finding was recorded by the learned District Judge that the Petitioner was an adopted son of the original tenant who was the husband of said Baswantibai. The learned District Judge by the impugned order rejected the application of the Petitioner and directed that the Nazir of the Court be appointed as a guardian.

3. The learned counsel for the Petitioner relied upon the decision in Civil Appeal No.880/2001 contending that it cannot be said that the tenant has not left behind any heirs as the finding that the Petitioner is an adopted son stands concluded. The learned counsel for the Respondents on the other hand submitted that no evidence has been led by the Petitioner that he is the adopted son and the finding was rendered in a different context.

4. The only question is, whether in the appeal, the

Petitioner should be permitted to contest the appeal .The learned District Judge has noted the decision in Civil Appeal No.880/ 2001, yet, has found that not even prima facie case is made out by the Petitioner for joining him as a Respondent in the appeal. This approach is not correct. The Petitioner could have been joined keeping an inquiry regarding his adoption to be open as the decision rendered between the parties cannot be simply brushed aside. At the same time, the learned District Judge is not precluded from inquiring, for the purpose of the present appeal, as to the right of the Petitioner. In these circumstances, the appropriate course of action will be to permit the Petitioner to be brought on record subject to the petitioner thereafter proving his right, title and interest as legal representative of the original tenant. Accordingly, the writ petition is disposed in the following terms:-

- (i) The judgment and order passed below Exhibit 16 in Civil Appeal No.299/2010 is quashed and set aside;
- (ii) The Respondents-Appellant will bring the Petitioner on record as a Respondent subject to the rights and contentions of the Respondent regarding the entitlement of the Respondent to contest the appeal;
- (iii) It will be open to both the parties to advance such submission or place such materials or evidence, as may be required, for adjudication of the above aspects;

5. What is stated above in this order is only to indicate a prima facie position and all contentions of the parties as regarding the entitlement of the Petitioners are kept open to be decided at the time of the hearing of the appeal;

6 The writ petition is disposed of accordingly.

(N.M.Jamdar, J.)