

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

916 WRIT PETITION NO. 8281 OF 2017

SHAIKH RIZWAN SHAIKH HAROON
VERSUS
MACHINDRA JAYWANTRAO HADE

...

Advocate for Petitioner : Mr. Shaikh Mujtaba Gulam Mustafa.
Advocate for Respondent : Mr. Nitin T. Tribhuwan.

...

CORAM : **V. K. JADHAV, J.**
DATE : 10th January, 2018.

ORDER:

. Being aggrieved by the common order passed below Exhibit 31 and 34 by the Joint Civil Judge Junior Division, Paithan dated 8th February, 2017 in Regular Civil Suit No.265 of 2010, the original Defendant has preferred this writ petition.

2 The Respondent / Plaintiff has instituted the suit for a decree of perpetual injunction in respect of the suit property. The Petitioner / Defendant has strongly resisted the said claim by filing the written statement. On the basis of the rival pleadings of the parties to the suit, the learned Judge of the Trial Court has framed the issue at Exhibit 28. During the pendency of the suit, the Respondent / Plaintiff has filed an application Exhibit 31 for framing of an additional issue as

to whether the Defendant proves that he is in possession of the suit property and the Petitioner / Defendant has also filed an application Exhibit 34 for framing of additional issues Nos.1 to 3 as detailed in the application Exhibit 34.

3 It appears that the Plaintiff claims to be in possession of the suit property on the basis of the registered sale-deed. The Defendant is claiming himself to be in possession of the suit property after the death of his father. In a suit for a relief of perpetual injunction and in absence of any counter claim on the part of the Petitioner / Defendant, vide Exhibit 28 initially, the Trial Court has rightly framed the issues to the effect that whether the Plaintiff is in lawful possession of the suit property and proves the alleged obstruction and whether he is entitled for the relief claimed or not. In view of the above, the framing of additional issues on the applications submitted by the parties as per Exhibit 31 and Exhibit 34 respectively, is unwanted and uncalled for. In a suit seeking a decree of perpetual injunction, when the Petitioner / Defendant has not made any counter claim, there is no question of framing the issue placing the burden on him to prove his possession over the suit property. Similarly, the Petitioner / Defendant has requested for framing additional issues, which would be a part of

the evidence and in case, if the Respondent / Plaintiff fails to prove his legal possession over the suit property, he would fail in his suit.

4 In view of the above discussion, I proceed to pass the following order:

ORDER

- I. The writ petition is hereby partly allowed.
No costs.
- II. The common order passed below Exhibit 31 and Exhibit 34 dated 8th February, 2017 by the Joint Civil Judge Junior Division, Paithan in Regular Civil Suit No.265 of 2010, is hereby quashed and set aside.
- III. Both the applications Exhibit 31 and Exhibit 34 are hereby rejected.
- IV. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]