

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD***

***WRIT PETITION NO. 12693 OF 2018***

Bhagwat s/o Shankar Shukla

... Petitioner

Versus

Mangalabai w/o Santosh Shivnerkar  
& another

... Respondents

Mr. S.P. Brahme, Advocate holding for Mr. P.K. Patil, Advocate for the Petitioner.

Mr. S.V. Suryawanshi, Advocate for Respondent no. 1.

***Coram : N.M. Jamdar, J.***

***Date : 10 December 2018***

**Per Court :**

1. Heard learned counsel for the parties.
2. Petitioner-plaintiff is aggrieved by the order passed by the learned Civil Judge, Junior Division, Pachora, rejecting the application filed by petitioner for striking out issue no. 3 - "Does plaintiff prove that he is owner of the suit property?"

3. According to the petitioner, the petitioner has never claimed ownership in respect of the suit property and the petitioner's case is that he is the protected tenant of the suit property. It is the contention of respondents that the petitioner has no right in respect of the suit property being as an owner or as a protected tenant. The learned Civil Judge has already framed the issue placing burden upon the plaintiff to prove his lawful possession. The petitioner will have to establish as how his possession is lawful and not merely a long standing possession. Therefore, the claim of the petitioner, having right in the suit property, is covered in this issue. Since the petitioner is not claiming ownership, issue no.3 is redundant as the answer to that issue is 'no'.

4. In view of this position, it is not necessary to pass any further order in this writ petition. With this clarification, writ petition is disposed of.

***N.M. Jamdar, J.***