

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

WRIT PETITION NO.2108 OF 2017

RAMESH SADA MAHAJAN
VERSUS
GOVIND EKNATH SHIROLE AND ANOTHER

...

Advocate for the Petitioner : Shri Ghute Suhas B..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th December, 2018

Per Court:

1 Notice of final disposal was issued to the Respondents on 22.02.2017. Despite service of court notice on both the Respondents, none has caused an appearance.

2 The Petitioner/ original Defendant No.1 is aggrieved by the impugned order dated 14.10.2016 by which, the application Exhibit 62 filed by him seeking framing of additional issues in RCS No.45/2015, has been rejected.

3 I have considered the submissions of the learned Advocate for the Petitioner and have gone through the petition paper book.

4 The Trial Court has framed 07 issues on 02.07.2016.

5 In the light of the said issues, I have perused the pleadings of the parties and the application Exhibit 62 filed by the Petitioner under

Order 14 Rule 5 of the Code of Civil Procedure for seeking framing of additional issues. There is no prayer for deleting any of the seven issues already cast.

6 Insofar as the proposed Issue No.1 below paragraph 2 in Exhibit 62 is concerned, it appears that the contention of the Petitioner is that Defendant No.2 had misled the Tahasildar, Parola and had obtained the certificate dated 25.07.2012 under Section 32(M) of the Bombay Tenancy and Agricultural Lands Act. This issue is not cast. The Trial Court will, therefore, have to consider as to whether, any such issue needs to be cast after hearing all the sides.

7 Insofar as the proposed Issue Nos.2 and 7 are concerned, I do not find that the said proposed issues are relevant since the said aspects would be considered by the Trial Court while deciding Issue Nos.1 and 6.

8 I have considered the proposed Issue No.3, which is also not relevant since the Trial Court will have to consider the pleadings of the parties while deciding as to who is in possession.

9 I further noticed that the proposed Issue Nos.4 and 5 pertain to the tenancy proceeding, which was initiated by Ranga Bhat, Gopurao Bhat and Vasudeo Bhat Dhekare and the said aspect was gone into by the Mamlatdar. As such, the Trial Court would have to consider whether, the proposed Issue Nos.4 and 5 have to be framed or not.

10 In view of the above, this Writ Petition is partly allowed. The

impugned order dated 14.10.2016 is sustained to the extent of rejecting Exhibit 62 insofar as the proposed Issue Nos.2, 3, 6 and 7 are concerned. Exhibit 62 is restored to the file of the Trial Court to consider whether, the proposed Issue Nos.1, 4 and 5 need to be cast. Needless to state, the Trial Court would hear all the litigating sides while deciding the application Exhibit 62 to the extent of the above proposed three issues.

kps

(RAVINDRA V. GHUGE, J.)