

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.612 OF 2018

Maruti Sadashiv Sankpal
(since deceased through LRs)

...Applicant

vs.

Milind Aanand Sawant and Ors.

...Respondents

Mr. Wasim Najirchamed Samlewale, for the Applicant.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 20, 2018

P.C.:

. Heard Mr.Samlewale, learned counsel for the Applicant.

2. The challenge in this Petition is to the order dated 16th December, 2018 by which the trial Court has dismissed the Applicant's application for recasting of the issues or framing of additional issues in regard to the non-joinder of necessary party.

3. Mr. Samlewale submits that upon the demise of the original tenant Mr. Maruti Sadashiv Sankpal, his brother's son Rahul who was also a joint tenant, is in possession of the suit premises. He therefore, submits that the suit is instituted is not maintainable for non-joinder of necessary party i.e. Rahul. He submits that such issue arises after the suit and therefore such issue is required to be framed. He submits that the learned trial

Judge erred in making the impugned order and dismissing the Applicant's application for recasting of issues or framing of additional issues as proposed by the Applicant.

4. Upon due consideration of the aforesaid contention and perusal of the material on record, there is no case made out to interfere with the impugned order.

5. In such matters, the Plaintiffs is the *dominus litus*. The Plaintiffs, cannot be compelled to seek eviction of Rahul, if according to the Plaintiffs Rahul, has no relation with the suit premises. If at all any decree is ultimately made in this suit, the such decree, can always be obstructed by or at the instance of Rahul or any other person who claims to be allegedly in a possession of the suit premises in their capacity as tenant or otherwise.

6. However, at the instance of the present Applicant who is Defendant in the suit, there is no case made out for recasting of the issues or framing of the additional issues.

7. It is clarified that the issue of status of Rahul is kept open and cannot be held as concluded by the impugned order or this order.

8. With the aforesaid clarification, this Civil Revision

Application is dismissed. There shall be no order as to cost.

9. The Petitioner is directed to place a copy of this order before the trial Court and furnish copy of the same to the Respondents.

(M. S. SONAK, J.)