

Mr. P. G. Lad for Petitioners.
Mr. Pradeep J. Thorat for Respondent No.1.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged - (i) the order dated 18.01.2017 passed by the learned Judge, Court Room No.8 of the Court of Small Causes at Bombay below exhibit-39 whereby the learned Judge declined to mark family settlement / arrangement dated 25.10.1975 as an exhibit; and (ii) the order dated 17.11.2017 passed by the learned Judge below exhibit-46 in R.A.E.Suit No.982/1695 of 2001. Exhibit-46 was filed by the plaintiffs seeking review of order dated 18.01.2017 below exhibit-39. By that order, the learned trial Judge rejected the review application filed by the plaintiffs.

1/3

4. In support of this Petition, Mr. Lad submitted that respondent No.1 / defendant No.1 had raised objection to the maintainability of the Suit. In view thereof, preliminary issue was framed as regards jurisdiction of the Small Causes Court to entertain and try the Suit as defendant No.1 contended that there is no relationship of landlord and tenant between them. During the course of recording evidence for deciding preliminary issue, Abhishek Joshi, son of defendant No.1 was examined. He invited my attention to paragraph 5 of his examination-in-chief as also first paragraph of his cross-examination. Mr. Lad submitted that D.W.1 was shown family arrangement / settlement dated 25.10.1975 and he admitted the said document. It was admitted in evidence and marked as exhibit-A. D.W.1 deposed that the said document has been signed by his mother and father on every page of the document. The learned Advocate for the defendant No.1 submitted that this is not a complete document and his submission was recorded. Mr. Lad submitted that as the document was admitted in evidence, the learned trial Judge was not justified in declining to mark it as an exhibit. Order dated 18.01.2017, therefore, deserves to be set aside. He submitted that as by order dated 17.11.2017, review was dismissed, that order also deserves to be set aside.

5. On the other hand, Mr. Thorat invited my attention to paragraph 2 of the plaint where plaintiffs asserted that Ram Nivas building was acquired by Rambhau Joshi, father of the plaintiff No.3, father-in-law of the plaintiff No.1 and grandfather of the plaintiff No.2. By family settlement dated 25.10.1975, Ram Nivas building was given to the plaintiffs and the defendant No.1 was given the suit premises namely, Shop No.5 on the ground floor of Ram Nivas building situate at Ranade Road, Dadar, Mumbai 400 028 on monthly tenancy of Rs.137.70/-. He invited my attention to paragraph 7 of the examination-in-chief of D.W.1 Abhishek Joshi as also the fact that the learned trial Judge

recorded submission of defendant No.1 in the cross-examination of D.W.1 that the document dated 25.10.1975 is not a complete document. Mr. Thorat submitted that D.W.1 did not file any document. In other words, he submitted that D.W.1 did not produce the family arrangement / settlement dated 25.10.1975. After conclusion of re-examination of D.W.1, the learned trial Judge made a note to the effect that “original exhibit-A be returned to the plaintiffs on retaining the photocopy (true copy) thereof”.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, during the course of cross-examination of D.W.1, he was confronted with the family arrangement / settlement dated 25.10.1975. A perusal of the order dated 18.01.2017 below exhibit-39 as also order dated 17.11.2017 below exhibit-46 does not indicate that that learned trial Judge has adverted to this aspect at all. As the learned trial Judge did not consider this aspect, the impugned orders are liable to be set aside thereby directing the learned trial Judge to consider marking of family arrangement / settlement dated 25.10.1975 afresh. The learned trial Judge will bear in mind the fact that the evidence adduced at the stage of deciding preliminary issue is the stage in the Suit and also bear in mind the fact that it was marked as exhibit-A during the course of cross-examination of D.W.1. Subject to this, the impugned orders are set aside to the extent of family arrangement / settlement dated 25.10.1975. The learned trial Judge will consider this aspect afresh. All contentions of the parties on merits are expressly kept open.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)