

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8485 OF 2016

Elaichi Inder Mallah ... Petitioner
Vs.
Deepchand Sohanram Buswala ... Respondent

Mr. Awadhesh R. Pandey for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JUNE 12, 2018

P.C. :

Heard Mr. Pandey, learned Counsel for the petitioner.
Respondent appears in person.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 04.02.2016 passed by the learned Judge, Court Room No.38 of the Small Causes Court at Mumbai, Bandra Branch below exhibit-37 in R.A.E.&R. Suit No.76/95 of 2011. By that order, the learned trial Judge has rejected the application made by the defendant seeking permission to file additional evidence in lieu of examination-in-chief along with the documents.

3. In support of this petition, Mr. Pandey reiterated the submissions made before the trial Court. He submitted that respondent-plaintiff is not the owner of the land where the suit premises is situate. The land is owned by the Municipal Corporation of Greater Mumbai / Collector and not the plaintiff. He submitted that basically, the Suit instituted by the respondent-plaintiff for eviction of the defendant itself is not maintainable. He, therefore, submitted that Petition requires consideration.

4. With the assistance of the parties, I have perused the impugned order. In paragraph 13, the learned trial Judge observed that in the plaint, plaintiff has not averred that he is owner of the land. He claims to be the owner and landlord of the chawl known as Sohan Seth Chawl and that defendant is his tenant in respect of room No.6. In paragraph 14, the learned trial Judge noted that burden is on the plaintiff to prove that he is owner of the chawl where the suit premises is situate. It is, therefore, not necessary to grant permission to the defendant to file additional evidence and documents as the defendant wants to produce documents in respect of the land. For the reasons recorded in paragraphs 13 and 14 of the impugned order, I do not find that the learned trial Judge committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

5. However, it is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of the Code of Civil Procedure, 1908.

(R. G. KETKAR, J.)

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