

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4452 OF 2016

Smita Raghunandan Nikam,	]	
Age 51 years, Occ. Doctor,	]	
R/of 1/3 Amol Apartment,	]	
Bhandar Ali, Jayram Sadashiv Road,	]	 Petitioner /
Opp. Prabhat Cinema, Thane (E) – 400 601.	]	(Org. Plaintiff)

Versus

Shamrao Dadasaheb Chavan,	]	
Age : 70 years, Occ. Retired,	]	
R/of Panchavati Co-op. Housing Society Ltd.,	]	
Opp. Police Center, Marol Maroshi,	]	 Respondent /
Andheri (E), Mumbai – 400 059.	]	(Org. Defendant)

Mr. Shivaji A. Masal for the Petitioner.

Mr. Anand S. Kulkarni for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Masal, learned counsel for the Petitioner, and Mr. Kulkarni, learned counsel for the Respondent.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 11th February 2016 passed by the Court of Civil Judge, Junior Division, Khandala, below “Exhibit-29” in Regular Civil Suit No.148 of 2013. The application at “Exhibit-29”

was filed by the Respondent-Defendant seeking framing of additional issue on the count that, though a specific pleading was made in the written statement that the suit property was nominally purchased in the name of 'Snehalata Shamrao Chavan', Respondent, in fact, is the real owner of the suit property. However, an issue to that effect was not framed and hence, for resolving the controversy in the Suit completely and finally, the framing of additional issue to that effect is necessary.

3. The said application was opposed by learned counsel for the Petitioner on the count that, the evidence of the Petitioner-Plaintiff is already recorded and the pursis of closing of evidence is also filed. The matter was fixed for recording the evidence of the Respondent-Defendant and as at this belated stage, the application was filed for framing of additional issue, it needs to be rejected.

4. The learned Trial Court, vide its impugned order, held that, in view of the pleadings in the written statement, the additional issue is required to be framed and, accordingly, directed the framing of *“Additional Issue No.3A”* to the effect that, *‘whether the Defendant proves that the suit property was purchased nominally in the name of Snehalata Shyamrao Chavan and he is the real owner of the suit property?’*

5. While challenging this order of the Trial Court, the only submission

advanced by learned counsel for the Petitioner is that, as the evidence of the Petitioner-Plaintiff is already closed and at this stage, if the additional issue is framed, the Petitioner may not get an opportunity to lead evidence in respect of this additional issue.

6. This grievance of the Petitioner can be solved, if the Petitioner is given an opportunity to lead additional evidence in respect of this additional issue, if required.

7. Considering the settled position of law that, *“issue can be framed or re-framed at any stage of the proceedings, even at the time of Judgment”* and, especially, in the present case, as there was already pleading on record in respect of the additional issue, there is no question of any illegality committed by the Trial Court in allowing the Respondent's application and framing additional issue. The Writ Petition, therefore, deserves to be dismissed. The Petitioner is, however, given a liberty to lead additional evidence, if required, which will be restricted only with respect to the *“Additional Issue No.3A”*.

8. The Writ Petition is disposed of and Rule is made absolute in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]