

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8257 OF 2017

Ratna Shivaji Deshkhaire & Ors.	 Petitioners
V/s.	
Subhash Shivaji Jadhav & Ors.	 Respondents

Mr. Sagar Anant Joshi for the Petitioners.

Mr. Prashant S. Hagare for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH APRIL, 2018.

P.C. :

1. Heard Mr. Joshi, learned counsel for the Petitioners, and Mr. Hagare, learned counsel for the Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 6th February 2017 passed by the 2nd Joint Civil Judge, Junior Division, Indapur, below the application at “Exhibit-192” filed in Regular Civil Suit No.120 of 2003.

3. The application at “Exhibit-192” was preferred by the present Petitioners, under Order 14 Rule 5 of the Civil Procedure Code, 1908, for maintaining the earlier issue and modifying the amended issue.

4. The grievance of learned counsel for the Petitioners is that, the

Respondents-Plaintiffs have filed a Suit for injunction to restrain the Petitioners from causing obstruction to their possession. It is specifically stated that, their possession is that of 'owners' and, accordingly, the Trial Court has earlier framed 'Issue No.1' as to '*whether the Plaintiffs prove their possession over the suit property referable to his valid title?*' However, on the application given by the Petitioners herein, the Trial Court has re-framed the said issue by deleting the words "*referable to his valid title*". The said order was passed on 27th October 2016. It is pertinent to note that, the said order was not challenged before this Court at any time, but a fresh application was given before the Trial Court for modifying the said issue and maintaining the earlier issue. The Trial Court has, while deciding this application, considered the fact that the Suit is simplicitor for injunction and no relief of declaration of title is claimed and in view thereof, the Trial Court found that the words "*referable to his valid title*" were rightly deleted from 'Issue No.1'.

5. In my considered opinion, having regard to the controversy involved in the present case, in a Suit for injunction, the main issue relates to possession over the property and that issue is already framed on record. The issue of title may not be strictly speaking necessary for deciding the suit of injunction. However, if Respondent No.1 is claiming possession, on the basis of the title, the burden lies on Respondent No.1-Plaintiff to prove the same, if he has to establish his case, as made out in

the plaint, irrespective of the fact whether the issue to that effect is framed or not.

6. Hence, no interference is warranted in the impugned order passed by the Trial Court. Therefore, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]