

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3538 OF 2018

Shalini Jagannath Thavai and Ors.] Petitioners

Vs.

Mohan Gangaram Patil & Ors.] Respondents

Mr. Sagar Talekar, for Petitioners.

.....

.....

CORAM : R.G. KETKAR, J.

DATE : 21ST MARCH, 2018.

P.C.

Not on board. At the request of Mr. Talekar taken up in the production board.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as “defendants” have challenged the judgment and order dated 16th February, 2018 passed by the learned Judge, Court Room No.25 of the Court of Small Causes at Mumbai below Exhibit 52 in R.A.E Suit No.1018 of 2011. By that order, the learned trial Judge rejected the application made by the defendants for framing additional issues with regard to jurisdiction of the Small Causes Court.

3. In support of this Petition, Mr. Talekar strenuously contended that in paragraph 18 of the written statement, defendants specifically contended that in view of the admitted position in the plaint, Small Causes Court has no jurisdiction to entertain and try the suit. Though this plea was specifically raised in the written statement, issues framed on 21st April, 2014 do not include issue as regards jurisdiction. He submitted that in the cross-

examination of P.W.1 Mohan G. Patil, he admitted that Plot No.5 is not mentioned in the Will of Raosaheb Balaram Dnyndeo Thakur. He, therefore, submitted that the learned trial Judge ought to have framed additional issue as suggested in the application Exhibit 52.

4. With the assistance of the learned Counsel for the petitioners, I have perused the impugned order. In paragraph 5, the learned trial Judge noted that in paragraph 12 of the plaint, the plaintiffs specifically asserted that the suit is between the landlords and legal heirs of tenant. In paragraph 4 of the written statement, the defendants have claimed to be tenants in respect of the suit premises. In paragraph 24 (1) the defendants admitted that Late Raosaheb was owner of the plot of land and that the plaintiffs No.1 and 2 are executors of the Will and Testament. The learned trial Judge in paragraph 6 of the impugned order observed that the issues are required to be framed when a material proposition of fact or law is affirmed by the one party and denied by the other.

5. For the reasons recorded by the learned trial Judge in paragraph 6, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed with no order as to costs.

6. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]