

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 480 OF 2017

Manohar Shantaram More	...	Applicant
V/s.		
Smt.Neelam Narayan Nitore & Anr.	...	Respondents

- Mr.Jagdish N. Jayale for the Applicant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicant. Learned counsel for the Respondents is absent.

2] By this Civil Revision Application, the Applicant is challenging the order dated 5th April 2017 passed by the Ad-hoc Judge, City Civil Court, Mumbai, below Exhibit-43 in S.C. Suit No. 4755 of 2011.

3] The Application at Exhibit-43 was filed by the present Applicant for recasting of issues. The Applicant is Defendant No.1 before the trial Court.

4] According to the Applicant, the suit is filed by the Respondent No.1/Plaintiff for partition and separate possession of her 1/3 share in the suit property. However, there was already a

settlement arrived at between the parties to partition by metes and bounds. Hence, issue to that effect was required to be framed; especially having regard to the evidence led on record by both the parties.

5] In my considered opinion, when the trial Court had already framed the issue, as to, “whether the Plaintiff is entitled for one third share in the suit property?” and also, as to, “whether the Plaintiff is entitled for perpetual injunction as sought?”, it covers all controversy between the parties.

6] While answering the first issue, as to, “whether the Plaintiff is entitled for 1/3 share in the suit property?”, the trial Court is bound to consider whether there was earlier settlement by metes and bounds. If the Petitioner/Defendant succeeds in proving, so naturally the issue No.1 about her entitlement of 1/3 share of Respondent No.1/Plaintiff in the suit property is bound to be answered in negative. Hence, there is no necessity of framing any separate issue on that point. The impugned order therefore passed by the trial Court does not call for any interference.

7] The Civil Revision Application hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]