

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 2471 OF 2018

Mr. Ramsukh Lochan Gupta

...Petitioner

Versus

The State Of Maharashtra
And Anr.

...Respondents

....

Ms. Ratna F. Jaiswal, Advocate for the Petitioner.

Mr. A.A. Alaspurkar, AGP, for Respondent No.1 – State.

Mr. Rammurti D. Mishra, Advocate for Respondent No.2.

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CORAM : R. G. KETKAR, J.

DATE : 09th MARCH, 2018

PC.

1. Heard Ms.Ratna Jaiswal, learned counsel for the petitioner and Mr.Rammurti Mishra, learned counsel for respondent No.2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant' has challenged the judgment and order dated 14.9.2017 passed by the learned trial Judge below Exhibit-25 in L.E. Suit No.133/156 of 2014. By that order, the learned trial Judge rejected the application made by the defendant for recasting the issues.

3. In support of this Petition, Ms.Jaiswal submitted that the defendant is the owner of the suit premises. There is no relationship of licensor and licensee between the parties. It is, therefore, necessary to

frame issue as to whether the plaintiff proves that he is a licensor of the suit premises. She has taken me through the application made by the defendant for recasting the issues. In paragraph-1 of that application, it is asserted that the defendant has denied the title of the plaintiff in suit premises No.768 but to misguide the Court he mentioned room No.766 which is owned by third person. The suit premises, namely, room No.768 is already sold by the plaintiff to the defendant in the year 1994. However, no issue was framed regarding title of the plaintiff. It is, therefore, necessary to recast the issues so far as title of the plaintiff is concerned. She, therefore, submitted that application Exhibit-25 may be allowed by recasting the issues.

4. On the other hand, Mr. Mishra supported the impugned order.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-4 of the impugned order, the learned trial Judge has referred to issue No.1 which is to the following effect :

“1. Whether plaintiff proves that defendant is licensee of plaintiff in respect of the suit premises?”

6. After referring this issue, the learned trial Judge observed that the burden is on the plaintiff to prove that the suit premises bears room No.766 and there exists relationship of licensor and licensee

between the plaintiff and the defendant. If according to the defendant, he has purchased the suit premises from the plaintiff, his defence can be agitated by him by cross-examining the plaintiff's witness in that regard and through his own evidence also. If the defendant succeeds in proving the transaction of sale of suit premises by the plaintiff is his favour, issue No.1 will be answered in the negative. The learned trial Judge, therefore, held that issue No.1 covers the defence raised by the defendant in paragraphs-3 and 5 of the written statement and, therefore, held that additional issue as regards title of the plaintiff and/or recast issues already framed vide Exhibit-10, is not necessary.

7. After considering the submissions advanced by the learned Counsel appearing for the parties, 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.

8. 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 Code of Civil Procedure, 1908.

(R. G. KETKAR, J.)