

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13025 OF 2018

Smt. Shila Mohanlal Dingra & Ors. .. Petitioners
Versus
Smt. Renu Mohan Malkani & Ors. .. Respondents

Mr. C.M.Dingra party in person

CORAM : M.S.SONAK, J.

DATE : 3rd December 2018.

P.C.

Heard Mr. Dhingra petitioner No.2 in person. He states that he has power of attorney on behalf of petitioner No.1, who is his mother and petitioner No.3, who is his sister. He seeks leave of this Court to appear on behalf of petitioner Nos.1 and 3 on the basis of such power of attorney. Considering the relationship between the parties, leave is granted.

2] The challenge in this petition is to the order dated 20th October 2018 made below Exh.57 to the extent that the learned Small Causes Court has failed to grant a decree of possession as well as compensation from 1979 in favour of the petitioners and

against the respondents. Mr. Dhingra submits that by the impugned order dated 20th October 2018, since the defence of the respondents has already been struck off, nothing further survives in the suit, which was required to be decreed as prayed for. He relied upon a ruling of Supreme Court in the case of Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira (dead) through Lrs. reported in **2012 (5) SCC 370**, to submit that in a matter where title of the landlord is established and the defendants are nothing but gratuitous licencees, decree for possession has to be made as a matter of course.

3] The petitioners in their application at Exh.57 applied for following reliefs:-

“10. In view of the facts and circumstances as aforesaid plaintiffs pray that:-

(a) this court may be pleased to strike off claim/defence of defendants and pass decree of possession at the earliest;

(b) this court may be pleased to grant compensation from 1979 and differential till date;

(c) this court may be pleased to grant compensatory costs;”

4] By the impugned order, the learned trial court has ordered the defence of the defendants/ respondents to be struck off under the provisions of Order 15-A of the Code of Civil Procedure, 1908. However, the relief of passing a decree of possession at the earliest or for grant of compensation from 1979 and differential till date has been declined.

5] There is absolutely no jurisdictional error in the impugned order. In the main suit, the issues are yet to be framed. Even though the defence may have been struck off, that may not preclude the defendants from cross examining the plaintiffs/ their witnesses. Besides, in a matter of this nature, it is for the plaintiffs/ petitioners to stand or fall on the basis of their own pleadings. This means that the plaintiffs/ petitioners will have to make out a case for seeking a decree for possession. The decree for possession or for compensation could not have been made at this stage itself merely because the defence is struck off.

6] The ruling in the case of Maria Margarida (supra) is in

the context of final reliefs in the suit. The observations upon which reliance has been placed by the petitioners do not state that the decree has to be made at the interim stage itself no sooner the defence of the defendants is struck off.

7] Accordingly, there is no merit in this petition. This petition is dismissed. There shall be no order as to costs.

8] It is made clear that none of the observations in this order need influence the trial court whilst disposing off the suit finally on its own merits and in accordance with law. The only limited issue involved in this petition was whether the petitioners were entitled to a decree at this stage itself.

(M.S.SONAK, J.)