

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO.13955 OF 2019

DNYANESHWAR SHANTARM JOSHI
VERSUS
SUREKHA SANJAY BHOI AND OTHERS

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Advocate for Petitioner : Shri Sawant Amol S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 20, 2019

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PER COURT :-

1. The petitioner / original plaintiff in RCS No.62 of 2017 is aggrieved by the order dated 20.8.2019 passed by the trial Court, by which, application Exhibit 18 moved by the petitioner praying for framing additional issues, has been rejected.

2. The petitioner submits that he has specifically pleaded in the plaint that he is the owner of the suit property and has inducted all defendants and tenants. Defendant No.1, in the written statement, has claimed to be the owner and further claims that Defendant Nos.2 and 3 are inducted as tenants. The grievance of the petitioner is that the issue as to whether the defendant No.1 proves that he is the owner and whether he proves that defendants 2 and 3 were inducted as tenants by him, has not been framed by the trial Court. After a passage of time, the defendants may come forward and take a plea

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2- WRIT PETITION NO.13955 OF 2019

that proper issues were not cast and this is likely to happen if the defendants would fail in the suit.

3. I find that when the plaintiff moved application Exhibit 62, seeking framing of additional issues, defendant No.1 has tendered a written say opposing the framing of the additional issues and it is contended that no such addition is necessary in the light of the seven issues already cast.

4. It requires no debate that under Order XIV, the trial Court has to frame issues on the material proposition affirmed by one party and denied by the other. Issues of facts and issues of laws are to be cast. The grievance of the petitioner is well taken care of by issue Nos.1 to 3 framed on 28.6.2019. So also, if the defendant does not desire the framing of an issue considering his denial and distinct assertion, he would be stalled from raising such an issue any time in future, so as to contend that proper issues were not cast.

5. In view of the above, this petition stands disposed off.

(RAVINDRA V. GHUGE, J.)

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