

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13897 OF 2018

Annappa Appa Yelowade
Deceased Through LR. & Ors. ... **Petitioners**
Versus
Shri.Baban Shivgonda Patil ... **Respondent**

.....

Mr.Suresh M. Kamble, Advocate for the Petitioners.

Mr.Prashant P. Kulkarni, Advocate for Respondent.

....

CORAM : A.M.BADAR J.

DATED : 13th NOVEMBER 2019.

P.C. :

1 This petition is filed by defendants/appellants challenging rejection of their application at Exhibit 31 by the Appellate Court by which they had requested the Appellate Court to frame issue “Whether defendant’s forefather Appaji Yelowade and Laxman Suryaji Patil are tenants and owner of Survey No.166(4C)”. The learned Appellate Court by the impugned Order dated 19/07/2018 was pleased to reject the said application.

2 Heard the learned Counsel appearing for the petitioner. He drew my attention to the application at Exhibit 31 and

contended that there are specific averments in written statement of defendants. According to them Survey No.166 (4C) was part of Gat No.810 and ancestors of defendants namely Appaji Yelowade and Laxman Patil were having relationship as tenant and owners in Survey No.166(4C). Therefore, according to learned Counsel appearing for petitioners/original defendants, the learned trial Court ought to have framed issue to that effect. As the said issue was not framed, the request was made at the appellate Court, but it was erroneously rejected by the learned Appellate Court by holding that in appeal what is required to be seen is whether the Judgment and Decree of the learned trial Court is legal and proper.

3 The learned Counsel appearing for respondent/original plaintiff drew my attention to issue No.4 framed by the learned trial Court and argued that as the necessary issue was already framed and answered in negative, at final disposal of the appeal, the learned Appellate Court will give necessary finding on the said issue.

4 I have considered the submissions so advanced and also perused the material placed before me.

5 Plaintiff claimed that he is owner and possessor of Gat No.810 and defendants have encroached upon said field by taking

possession of 12 R land thereof. Defendants disputed this claim and denied encroachment. It is further averred by defendants that originally Survey No.166(4C) was included in Gat No.810 and there ancestral Appaji Yelawade was tenant prior to effecting Consolidation Scheme. Issue No.4 framed by the learned trial Court is to the effect that whether defendants prove that they are tenant in old Survey No.166 (4C) and the relationship as landlord and tenant in between the plaintiff and defendant. Thus, the issue sought to be framed at the appellate stage was considered by the learned trial Court.

6 Hence, no illegality, irrationality or procedural impropriety is found in the impugned Order. The petition fails and, therefore, the Order :

ORDER

The Writ Petition is dismissed.

(A.M.BADAR, J.)