

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1122 OF 2019

Kedarnath Nagnath Swami ... Petitioner
Vs.
Shrishail Shivrudrappa Andage and others ... Respondents

Mr. R. M. Haridas i/b. Mr .P. P. Kulkarni for Petitioner.
Mr. R. B. Kulkarni for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 20, 2019

P.C. :

Heard Mr.Haridas, learned Counsel for the petitioner and Mr.Kulkarni, learned Counsel for the respondent No.1 at length.

2. This Petition takes exception to the order dated 04.12.2018 passed by the learned 2nd Joint Civil Judge, Junior Division, Solapur below exhibit-80 in R.C.S.No.58 of 2009. By that order, the learned trial Judge rejected the application made by the defendant No.5 for framing additional issues.

3. Mr. Haridas seeks leave to delete respondents No.2 to 4 on the ground that respondent No.1 being the plaintiff is the only contesting respondent. In view thereof, leave to delete respondents No.2 to 4 is granted. Amendment shall be carried out forthwith.

4. Rule. Mr. Kulkarni waives service on behalf of the sole respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. The matter was adjourned so as to enable Mr. Kulkarni to take

instructions as to whether the respondent No.1-plaintiff is claiming any relief against the petitioner-defendant No.5. This was necessitated in view of the finding recorded by the learned trial Judge in paragraph 2 of the impugned order. In paragraph 2, the learned trial Judge observed that the plaintiff has not claimed relief against the defendant No.5. The plaintiff has not prayed for any other relief.

6. Mr. Kulkarni, upon taking instructions, states that plaintiff has also sought relief against the defendant No.5.

7. In the light of the statement made by Mr. Kulkarni, the impugned order is liable to be set aside thereby restoring application exhibit-80 to its original position for deciding it afresh. Hence the following order:

- a. The impugned order dated 04.12.2018 is set aside;
- b. Application exhibit-80 in R.C.S.No.58 of 2009 is restored to its original position;
- c. The learned trial Judge will first decide the Application and will thereafter proceed with the hearing of the Suit;
- d. All contentions of the parties on merits are expressly kept open;
- e. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)