

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2069 OF 2019

Nagesh Krishnaji Koyalkar	]	Petitioner
Vs.		
Laxmibai Rajaram Wankhare and Ors.	]	Respondents

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Mr. J.A. Udaipuri M/s. Udaipuri & Co., Advocate for the Petitioner.
Mr. S. Nagvadaria, Advocate for Respondents No.1 to 4.
Mr. Seegarla Shrikant Murlidhar, Advocate for Respondents No.5 to 9.

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CORAM : R.G. KETKAR, J.

DATE : 17th JULY, 2019.

P.C.

Heard Mr. Udaipuri, learned Counsel for the petitioner, Mr. Nagvadaria, learned Counsel for respondents No.1 to 4 and Mr. Seegarla, learned Counsel for respondents No.5 to 9.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and decree dated 5th January, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No.526 of 2018. By that order, the Appellate Court allowed the Revision Application filed by respondents No.1 to 4, herein and set aside the order dated 23rd October, 2018 passed by the learned trial Judge below Exhibit 35 in R.A.D Suit No.489 of 2016. The Appellate Court allowed application Exhibit 35 filed by respondents No.1 to 4 herein and directed the plaintiff to implead them as party defendants in R.A.D Suit No.489 of 2016.

3. The plaintiff has instituted suit for declaration of his tenancy rights in respect of Room No.5, 2nd Floor, Building No.23, Kamathipura 10th Lane, Mumbai 400 009 (for short 'suit premises'). Defendants No.1 to 5 are the landlords. During pendency of the suit, respondents No.1 to 4 took out application Exhibit 35 on 2nd December, 2017 for impleading them as party defendants in the suit. By order dated 23rd October, 2018, the learned trial Judge rejected the application. Aggrieved by this order, respondents No.1 to 4 preferred Revision Application before the Appellate Court. By the impugned order, the Appellate Court has allowed the Revision Application.

4. The Petition was heard at length on 19th June, 2019. Arguments were concluded and the matter was posted on 3rd July, 2019 for passing order. The matter was posted on 3rd July, 2019 so as to enable Mr. Nagvadaria for taking instructions from respondents No.1 to 4 as to whether they want to withdraw application Exhibit 35 unconditionally. Mr. Nagvadaria states that respondents No.2 and 4 are present in the Court. He has tendered photo copy of PAN Card of respondent No.2 and Identity Card issued by Election Commission of India of respondent No.4, which are taken on record and marked "X Colly" for identification. Upon taking instructions from them, Mr. Nagvadaria states that;

- [1] respondents No.1 to 4 unconditionally withdraw application Exhibit 35;
- [2] respondents No.1 to 4 will not file application in the suit filed by the petitioner/plaintiff seeking identical relief;
- [3] respondents No.1 to 4 may consider filing a separate suit, if so advised.

Statements made on instructions are recorded.

5. Mr. Udaipuri submits that if respondents No.1 to 4 are permitted to file separate suit, all contentions of the petitioner/plaintiff including maintainability of such suit may be expressly kept open.

6. In view thereof, on the motion made by Mr. Nagvadaria, application Exhibit 35 is allowed to be withdrawn unconditionally. In view thereof, the impugned order dated 5th January, 2019 passed by the Appellate Court is set aside. In case, respondents No.1 to 4 institute separate suit, all contentions of the plaintiff including maintainability of such suit are expressly kept open. Liberty is reserved to the petitioner/plaintiff to file application for disposal of the suit in a time bound manner. If such application is made, the learned trial Judge will pass the appropriate order. Petition is disposed of.

[R.G. KETKAR, J.]