

Ms Ranjana Parikh for Petitioner.
Ms Seema K. Chopda for Respondents No.1 to 4.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as plaintiff, has challenged the order dated 27.11.2018 passed by the learned trial Judge below exhibit-47 in L.E.Suit No.80/91 of 2014. By that order, the learned trial Judge rejected the application made by the plaintiff for deletion of issues No.1 and 3 to 6. Rule. Ms Chopda waives service for respondents No.1 to 4. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. It is not necessary to set out the facts in detail. Suffice it to say that on the basis of the pleadings of the parties, on 04.09.2017, the learned trial Judge framed the following issues:

“ ISSUES

1. Does the plaintiff prove that the defendants were the gratuitous licensee of the suit premises?

2. Does the plaintiff prove that the said gratuitous license has been terminated by the plaintiff as claimed?
3. Does the plaintiff prove that the defendants are in illegal use and occupation of the suit premises as claimed?
4. Is the Suit within limitation?
5. Is the Suit bad for mis-joinder of parties?
6. Is the Suit hit by the principles of res-judicata?
7. Is plaintiff entitled for eviction and vacant possession of the suit premises?
8. Is plaintiff entitled for permanent injunction?
9. Is plaintiff entitled for inquiry into mesne profits?
10. What order and decree?"

4. The plaintiff filed application exhibit-47 for deleting issues No.1 and 3 to 6.

5. In support of this Petition, Ms Parikh submitted that in the earlier round of litigation, the status of the defendants is concluded. It is, therefore, necessary to delete issue No.3, which requires plaintiff to prove that defendants were gratuitous licensees of the suit premises. By issue No.3, plaintiff has to establish that defendants are in illegal use and occupation of the suit premises. She submitted that as the licence is terminated by filing Suit, plaintiff has established that the defendants are in illegal use and occupation of the suit premises. Plaintiff has to simply produce the certified copies of the orders passed in the earlier round of litigation. She, therefore, submitted that issues No.1 and 3 to 6 are required to be deleted.

6. On the other hand, Ms Chopda supported the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. I have already extracted the issues framed by the learned trial Judge. As far as issue No.6 is concerned, in my opinion, the said issue is not required to be framed as it cannot be said that the Suit is hit by the principle of res judicata. As far as issue No.5 is concerned, as all the defendants are impleaded in the Suit, it also cannot be said that the Suit is bad for mis-joinder of the parties. In so far as issue No.4, namely, "Is the Suit within limitation?", it is evident from record that in pursuance of the liberty granted by this Court in First Appeal No.279 of 1999 on 27.01.2014, plaintiff has instituted the present Suit on 09.05.2014. Thus, it cannot be said to be barred by limitation. In view thereof, the learned trial Judge ought to have deleted issues No.4 to 6. Hence, the following order:

- a. The impugned order dated 27.11.2018 is modified;
- b. Issues No.4, 5 and 6 are deleted;
- c. Rule is partly made absolute with no order as to costs.

8. Having regard to the fact that plaintiff is 82 years old, the learned trial Judge is requested to dispose of the Suit as expeditiously as possible and preferably within 6 months from the date of production of this order. Order accordingly.

(R. G. KETKAR, J.)

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