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D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 8234 OF 2017**

M/s. Aditya Shagun Developer and Others      ... Petitioners.

V/s

Shri Sharad Nivrutee Balwadkar  
and Others      .... Respondents.

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Ms. Manjiri S. Parasnis for the Petitioners.  
Mr. Ashok B. Tajane for Respondent Nos. 1 and 3.

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**CORAM: NITIN W. SAMBRE, J.**

**DATE:    OCTOBER 10, 2019.**

**P.C.:-**

1]    Special Civil Suit No.694 of 2006 was initiated against the Petitioners-Defendants. At the stage of final arguments, vide order below Exhibit-227, on January 18, 2017, the Civil Court directed framing of an additional issue i.e. Issue No.3A. In the aforesaid background, Respondents-Plaintiffs moved an application-Exhibit-261 for permitting to lead evidence. The said application came to be allowed vide impugned order, which is a subject matter of challenge.

2]    The learned Counsel for the Petitioners submits that Issue No.2

which was framed on June 10, 2009 and an additional Issue No.3A which was framed on January 18, 2017 are similar, though may not be identical. Based on the same, parties have already adduced evidence and that being so, Trial Court was not sensitive to the fact that evidence in support of an additional issue is already on record. According to the learned Counsel, by virtue of the order impugned, Respondents-Plaintiffs will be permitted to fill-in the lacunae which were left when the evidence on the original issues was recorded. As such, according to her, the order impugned is not sustainable.

3] Considered the submissions.

4] Upon perusal of the order dated June 10, 2009 wherein initially issues were framed and the order dated January 18, 2017 wherein additional Issue No.3-A was framed and the impugned order, it is apparent that the intention of the civil court is to permit Respondents-Plaintiffs to lead evidence in support of Issue No.3A. The only evidence which is to be recorded at the behest of the Respondents-Plaintiffs is in regard to proving the issue No.3A. It shall always be open for the Petitioners-Defendants to point out the said position to

the learned Civil Court.

5] Keeping the aforesaid liberty open to the Petitioners, in my opinion, no interference is warranted in the order impugned, particularly when Petitioners-Defendants have not questioned the order of framing an additional issue. That being so, Petition stands dismissed.

( NITIN W. SAMBRE, J. )