

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.14531 OF 2018**

Kamalabai Roopchand Jain and others.	]	Petitioners
Vs.		
Yogesh Vasantrao Satav	]	Respondent

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Mr. Tejas D. Deshmukh, for Petitioners.

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CORAM : R.G. KETKAR, J.

DATE : 9TH JANUARY, 2019.

P.C:

Heard Mr. Deshmukh, learned Counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as “defendants” have challenged the order dated 15th September, 2018 passed by learned 5th Additional Judge, Small Causes Court, Pune below Exhibit 58 in Civil Suit No.370 of 2014. By that order, the learned trial Judge rejected the application made by the defendants at Exhibit 58 for framing additional issues;

- “1. Does the plaintiff proved that description of suit property is true and correct?
2. Does the plaintiff proved that plaintiff has communicated defendants that plaintiff is become landlord of defendants?
3. Does plaintiff proved that defendants have carried out alleged permanent alteration in suit property in the month of January, 2003 as alleged in suit plaint?”

3. In support of this Petition, Mr. Deshmukh has invited my attention to the description of the suit premises given in paragraph 1 of the plaint. In paragraph 1, the plaintiff alleged that shop premises situate on the ground floor of CTS No.1668 admeasuring 235 square feet bounded with western side passage was let out to the defendant. In paragraph 6, the plaintiff alleged that defendants N.1 to 4 have included passage in the suit premises by demolishing wall between passage and the suit premises without written permission of the plaintiffs which amounts to additions and alterations of permanent nature

4. Mr. Deshmukh invited my attention to the written statement filed by defendants No.1,2 and 4 and in particular paragraph 6, 8 and 11. In paragraph 6, the defendants asserted that shop premises admeasuring 277 square feet was let out to original tenant Roopchand Dhandaji Jain. In paragraph 8, it was denied that the suit premises admeasures 230 square feet as alleged by the plaintiff. In paragraph 11, it was asserted that passage was never in existence on the western side of the suit premises. He submitted that on 4th August, 2015, the learned trial Judge framed following issues;

- “1. Does Plaintiff prove that Defendants without his consent given in writing, erected on the suit premises permanent structure?
2. Whether Plaintiff is entitled for the relief claimed?
3. What order and decree?”

The defendants, therefore, took out application Exhibit 58 for framing additional issues. By the impugned order, the learned trial Judge rejected the application on the ground that issues framed on 4th August, 2015 are comprehensive enough to include the additional issues proposed by the defendants. He submitted that the learned trial Judge was not justified in rejecting the application.

5. I have considered submissions advanced by Mr. Deshmukh. I have also perused the material on record. The suit is instituted for recovery of possession mainly on the ground of carrying out additions and alterations of permanent nature without obtaining written permission of the plaintiff. In paragraph 3, the learned trial Judge observed that if the plaintiff has not given correct description of the suit property namely has not given exact area or boundaries, he will suffer the consequences. The said point is, therefore, covered by issue No.2.

6. As far as issue, whether the landlord has attorned tenancy is concerned, that is also covered by Issue No.2.

7. For the reasons recorded in paragraphs 3 and 4 of the impugned order, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, the Petition fails and the same is dismissed.

8. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]