

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1460/2019

Smt. Shagirabi W/o Sheikh Habib through Mohd. Ishtiyaque Sk. Habib and
others

..Vs..

Abdul Jahagir S/o Mohd. Hanif

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Smt. S.W. Deshpande, Advocate for the petitioners.

CORAM : Z.A. HAQ, J.

DATE : 5.3.2019.

Heard.

The defendants have challenged the order passed by the trial Court by which the application (Exh. No.191) filed by the plaintiff under Order 14 Rule 5 of the Code of Civil Procedure is allowed and the issues are re-cast.

The plaintiff had filed the civil suit initially praying for decree for permanent injunction restraining the defendants from interfering with his possession over the suit property. The trial progressed and issues came to be framed on 22nd March, 2016 as follows:

“1. Whether plaintiff proves his lawful possession over the suit property?

2. Whether plaintiff proves obstruction and interference over the suit property at the instance of the defendant?

3. Whether plaintiff is entitled for the decree of permanent injunction as sought?

4. *What order and decree?"*

After the issues were framed, the plaintiff had filed an application (Exh. No.42) under Order 1 Rule 10 read with Order 6 Rule 17 of the Code of Civil Procedure. By the amendment, the plaintiff pleaded that he is illegally dispossessed during the pendency of the civil suit and prayed for restoration of possession of the suit property. The trial Court allowed the application (Exh. No.42) by order dated 6th December, 2012. The trial progressed and evidence of the parties and their witnesses came to be recorded. After the arguments are over, the plaintiff filed the application (Exh. No.191) which is allowed by the impugned order. The trial Court has amended the issue No.1 and has framed two additional issues as follows:

"1. Whether the plaintiff proves that he was in lawful possession of the suit fields on the date of institution of the suit?

2A. Whether the plaintiff proves that during pendency of the suit, the defendants dispossessed the plaintiff from the suit fields?

3A. Whether the plaintiff is entitled for the restoration of his possession over the suit fields by way of mandatory injunction as claimed?"

Submission on behalf of the defendants is that the trial Court should not have re-cast the issues after the recording of evidence of parties and their witnesses is

over and after the final arguments are also heard. It is further submitted that the plaintiff has led evidence in consonance with the amended pleadings and, therefore, recasting of issues is not necessary.

After examining the amended plaint and going through the impugned order, I find that the trial Court has not committed any error of jurisdiction by recasting the issues. It is well settled that issues can be recast at any stage. Hence, I see no reason to interfere with the impugned order. The writ petition is **dismissed**. No costs.

JUDGE

Tambaskar.