

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4999 OF 2017

Jaypal Annu Ghat

...Petitioner

vs.

Dhanpal Annu Ghat

...Respondent

Mr. Vijay Killedar for the Petitioner.

Mr. Manoj Patil for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 15th January, 2020

PC:

1. Heard learned counsel for the parties.
2. By this petition the petitioner has impugned the order dated 14.11.2016 passed by the Joint Civil Judge, Junior Division, Kurundwad, District Kolhapur below Exhibit 60 in R.C.S. No.4 of 2011.
3. Learned counsel for the petitioner submits that, the boundaries, description of the property has not been correctly mentioned in the plaint. He submits that neither has the valuation of the suit property been correctly done. Learned counsel for the petitioner relied on the description set out in Para 1 of the plaint and the specific denial of the existence of the property made by the petitioner (original defendant) in the written statement. Learned counsel for the petitioner submits that, in view of the Order XIV Rule 1, the learned Judge ought to have framed issues, as to whether the description of the property was correctly mentioned in the plaint and whether the suit

property was correctly valued and proper court fee stamp affixed thereon.

4. Learned counsel for the respondent opposed the petition. He submitted that, no interference is warranted in the impugned order. Learned counsel further submitted that the petitioner (original defendant) in para 8 of the written statement has accepted the description of the property. He submitted that in the said written statement in para 8, the petitioner has stated that the said property belonged to the joint family and that the petitioner has no individual right over the same. Learned counsel also relied on para Nos. 9 and 10 of the written statement filed by the petitioner (original defendant).

5. Perused the papers as well as impugned order.

6. The petitioner and respondent are brothers. The respondent (original plaintiff) has filed a suit being R.C.S.No. 4 of 2011 in the Court of learned Civil Judge, J.D. Kurundwad, District Kolhapur, as against the petitioner (original defendant) for possession of the suit property. According to the respondent (original plaintiff), he had purchased the said property and had given the possession of the said premises to the petitioner for using the same and as such the petitioner is a gratuitous licensee in the suit premises. In the said suit the petitioner has filed his written statement. In para 2 of the written statement, although the petitioner has disputed the description of the property, in para 8 of the written statement, the petitioner has given description of the property and stated that the said property is joint family

property and that the respondent (original plaintiff) has no individual right over the same. Learned Judge in Para 3 of the impugned order has observed the same and rightly rejected the application of the petitioner for framing additional issues. No infirmity can be found in the impugned order. Petition is accordingly disposed off as dismissed.

REVATI MOHITE DERE, J.