

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8450 OF 2016

Mr.Ajay Joshi, for Petitioner.
Ms.M.S. Bane, AGP for Respondent Nos.3 to 6.

DATE : 25TH JANUARY 2022

P.C.

- 1] This petition takes an exception to the order dated 25.04.2016 passed by the learned Civil Judge, Senior Division, Malshiras below Exhibit 188 in Regular Civil Suit No.6/2004.
- 2] The Petitioner herein filed the suit for declaration and injunction.
- 3] The defendants contested the Suit inter alia on the ground of the jurisdiction of the Civil Court to entertain the suit.
- 4] The trial Court framed the issues including the issue in relation to the jurisdiction of the Civil Court to entertain the suit.

5] While cross-examination of the Plaintiff was going on, the defendant No.7 moved an application at Exhibit 188 praying that the issue of jurisdiction be tried as preliminary issue.

6] The trial Court allowed the said application by the order impugned.

7] I have heard the learned counsel for the Petitioner. None for the contesting Respondent.

8] The learned counsel for the Petitioner submits that the trial Court ought not to have allowed the application after recording the evidence of Plaintiff, on all the issues. In support of his submission, the learned counsel for the Petitioner relied upon the Judgment of this Court in the case of ***Jagdish Hari Thatte vs. The Municipal Corporation of Greater Bombay & Anr. Reported in 2007(1) ALL MR 513.***

9] Admittedly, the application at Exhibit 188 came to be moved while cross-examination of the Plaintiff was going on. The suit appears to be of the year 2004. Thus, it would not be in the interest of justice to allow piecemeal trial after 18 years. In the result, following order is passed :

- 1] Writ Petition is allowed.
- 2] The order impugned dated 25.04.2016 is set aside.

[N.R.BORKAR, J]