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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 643 OF 2022**

P. Prabhakaran

.....Petitioner

V/s

Ashok Kishandas Sugandhi

since deceased through legal heirs

1.1 Shoba Ashok Sugandhi and Ors.

.....Respondents

Mr. P. S. Dani, Senior Advocate i/b Mr. Prasad B. Kulkarni for the
Petitioner.

None for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 01, 2022

P.C.:-

1] Regular Civil Suit No.626 of 2012 preferred by the Respondent/Plaintiff came to be dismissed vide judgment and decree dated 29/1/2021, which is a subject matter of challenge in Regular Civil Appeal No.4 of 2021 in which the Petitioner moved an Application Exhibits-30 and 37 for framing preliminary issue on maintainability of the appeal. According to the Petitioner, the Appellant/Plaintiff lacks locus to prefer the same. Application-Exhibit-37 seeking withdrawal of the consent given on Exhibit-24 is application for expediting the appeal.

2] In the aforesaid backdrop, Court below appreciated the submissions and rejected the Applications – Exhibits 30 and 37.

Exhibit-30 for framing preliminary issue came to be rejected on the ground that issue involved mixed question of fact and law.

3] I have considered the submissions of learned Senior Counsel for the Petitioner Mr. Dani assisted by learned Advocate Mr. Prasad Kulkarni. Fact remains that appeal is pending adjudication and I am informed that paper-book of appeal is also tendered. Apart from above, appellate court has recorded finding that question of deciding preliminary issue is not called for as the said issue involves mixed question of fact and law. That being so, no interference is called for in extraordinary jurisdiction.

4] Petition stands dismissed. Hearing of the appeal is expedited to be decided within six months.

(NITIN W. SAMBRE, J.)