

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

WRIT PETITION 1225 OF 2020

Sanjay @ Ganesh Ramchandra Nalwadkar ..Petitioner

V/s.

The State of Maharashtra & Ors. ..Respondents

Mr. R. N. Gite, Advocate for the Petitioner.

Mr. A. B. Kadam, Advocate for the Respondent.

CORAM : ROHIT B. DEO, J.

DATE : 14th JUNE 2022

PC.

1. The Petitioner is the Plaintiff in Regular Civil Suit 358 of 2016 which is instituted seeking a declaration that deceased Smt. Laxmibai Narayan Gaighani /Kulkarni, has expired without leaving behind legal heirs, and that, the interim order in Regular Civil Suit 117 of 1970 has worked itself out in view of the fact that Smt. Laxmibai Narayan Gaighani /Kulkarni, died in the year 1992.

2. The Plaintiff claims that he was required to approach the Civil Court since in the revenue record there is an entry indicating the right of Laxmibai Narayan Gaighani, to maintenance and the charge created. According to the Plaintiff since Smt. Laxmibai Narayan Gaighani died in the year 1992, the said entry ought to be deleted.

3. In the written statement filed on behalf of the State and its officers, there does not appear to be a denial of the title of the Plaintiff to the subject land. This is apparent from the reading of paragraph 5 of the written statement in which it is accepted that the mother of the plaintiff received the subject property from her father in law.

4. According to the learned counsel although the issue of title did not arise at all, the learned Trial Judge was pleased to frame issue 1 to the effect that "Does the plaintiff prove his exclusive title and possession over the suit property?" According to the learned counsel for the plaintiff considering the limited nature of the controversy and the fact that the Defendants are not denying the title or possession of the plaintiff, issue 1 is unnecessarily framed. The Plaintiff did apply to the learned Trial Judge seeking deletion of the said issue vide application Exh.20, which is rejected with the observation that there are certain submissions regarding the suit property as to whether the suit property was in possession "Of whom and owned by whom".

5. The learned Trial Judge then reasoned that no prejudice shall be caused if issue 1 is framed.

6. It is difficult to appreciate the approach of the learned judge. If issue does not arise at all in as much as there is no material proposition of law or fact which is affirmed by one party and denied by the other, it is absolutely unnecessary to frame an issue. The learned Trial Judge lost sight of the jurisprudential logic underlying framing of issues which is that the precise controversy must be

crystallized and the parties should lead evidence knowing the rival contentions, and restricted to the issues which actually arise and that the litigation does not meander in a directionless manner.

7. I have no hesitation in holding that the learned Trial Judge committed an error in refusing to delete issue 1 and to that extent the order impugned is set aside.

8. Issue 1 stands deleted, application Ex.20 is partly allowed.

9. Petition is allowed in the aforesaid terms.

(ROHIT B. DEO, J.)