

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10743 OF 2023

Marathwada Shikshan Prasarak Mandal

Through Principal

Dr. Rajendra S/o Pundlikrao Pawar

.... Petitioner

Versus

Municipal Corporation, Aurangabad

Through Commissioner

.... Respondent

.....

Mr. N.B. Khandare, Advocate for the Petitioner

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th AUGUST, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned Civil Judge, Senior Division (Corporation Court), Aurangabad, below Exhibit-87 in Special Civil Suit No.2 of 2016, thereby rejecting the application filed by the petitioner/plaintiff for recasting of issues.

2. Heard the learned advocate for the petitioner. Perused the writ petition memo, annexures thereto and the impugned order.

3. The Trial Court has held that the issues are framed in accordance with pleadings of both the parties. Facts of both earlier suit and present suit are different. Even if this suit is barred by *res judicata* or etopple, plaintiff should prove this

fact by adducing reliable and cogent evidence. Issues framed by the Court are necessary for fair disposal of the suit.

4. The Trial Court has passed a reasoned order. It appears from the order that since 2019, the petitioner/plaintiff has failed to lead evidence that also disentitles him from any relief in the present matter. No prejudice is likely to be caused to the petitioner if issues are framed.

5. There is no illegality or perversity in the order impugned in the present petition. There is no jurisdictional error or error of law committed by the Trial Court while passing the impugned order. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane