

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4494 OF 2023

Mashnaji Ramanna @ Ramlu @ Rama Ulliewar PETITIONER
VERSUS
Irabai Somaji Nukalwad (Died) LRs and Others RESPONDENTS

.....
Mr. Taher Ali Quadri, Advocate for the petitioner

.....
[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 20th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Joint Civil Judge, Junior Division, Degloor below Exhibit-85 in Regular Civil Suit No. 197 of 2022.
2. The suit is filed by the petitioner / plaintiff for declaration of ownership of the suit house and for perpetual injunction and for declaration that the decree passed in Regular Civil Suit No. 43 of 2011 is null and void and not binding on the plaintiff.
3. After appearance of the defendants and after they filed written statement opposing the suit, the Trial Court framed issues at Exhibit-63. Application Exhibit-85 is filed by the plaintiff for framing additional issue that "*Whether the defendants prove their ownership and possession over the suit house?*", contending that the defendants have averred in their written

statement that they are owners and in possession of the suit house.

4. According to the petitioners, for deciding the real controversy between the parties, the additional issue needs to be framed. The application was opposed by the defendants and the Trial Court rejected it, holding that in view of issue No.1 framed in the suit i.e. "*Do the plaintiffs prove their title and possession over the suit houses?*", the plaintiffs will have to discharge the burden of proving the said fact and thereafter the burden will shift on the defendants to prove their averment. In that view of the matter and since defendants have not filed any counterclaim, claiming their ownership over the suit house with the relief of declaration, the Trial Court rejected the application filed by the plaintiff for framing additional issue.

5. The order passed by the Trial Court is a reasoned order and it is in consonance with the settled legal position. No illegality or perversity is found in the impugned order. No case is made out by the petitioner to exercise extraordinary writ jurisdiction to cause interference in the impugned order. The writ petition, being devoid of merits is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE