

SA Pathan

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

WRIT PETITION NO.15474 OF 2023

Anandrao Rajaram Sankpal (Since
Deceased)

Through Legal Heirs & Ors

... Petitioners

V/s.

Laxmikant Ganpatrao Sankpal & Anr

... Respondents

Mr. Anand S Patil, for Petitioners.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 11, 2023

P.C.:

1. The defendants are challenging the order passed by the Trial Court refusing to frame additional issue.
2. The respondent/plaintiff filed suit seeking a declaration that he has become owner of the suit property based on adoption deed dated 21 October 1977. Further relief of injunction not to disturb plaintiff's possession over the suit property is also sought.
3. The petitioner filed written statement and contested the suit.
4. The petitioner thereafter amended the suit and raised a plea that plaintiff has succeeded the suit property in his capacity as tenant. Based on such pleading, the petitioner applied for framing of additional issue as under:

“Whether the plaintiff prove that as a adopted son of Kailaswashi Ganpatrao Laxman Sankapal he has right to stay as a tenant in the property no.366, C-1, Mohan Dhuruwadi, Veer Savarkar Marg, Dadar (West) Mumbai.”

5. According to the learned Advocate for the petitioners, since he has raised the plea in written statement, the necessary issue is required under Order 14, Rule 1 of the Code of Civil Procedure, 1908. However, it is well settled that only those issues which arises out of plea of the parties need to be framed. It is the case of the plaintiff that he has become owner of the suit property based on adoption deed, a consequential declaration is sought. Therefore, essential issue is regarding ownership of property based on adoption deed and, therefore, issue of tenancy casting burden on the plaintiff is not necessary.

6. On perusal of the averments in the plaint, the plaintiff's case is that he became owner of the suit property based on adoption deed dated 21 October 1977. An additional relief of injunction not to disturb possession is also sought.

7. The Trial Court has already framed an issue casting burden on the plaintiff to prove his ownership over the suit property. In view of the issue, the issue has been raised by the defendant which casts burden on the plaintiff to prove his status as tenant is not necessary, as such issue does not arise out of plea of the parties. Hence, the Trial Court has rightly rejected the application for framing additional issue.

8. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)