



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

WRIT PETITION NO. 3903 OF 2023

Chandrabhas Ramchandra Gawde & Ors.

..Petitioner/s
(Org. Defendants)

v/s.

Smt. Laxmibai Popatlal Shah & Ors.

..Respondents

Mr. Shekhar B. Prabhavalkar a/w. Ms. Sukrata Chimalkar for the
Petitioner/s.

Mr. Pradeep Thorat a/w. Ms. Aditi Naikare for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 8th SEPTEMBER, 2023.**

P.C.

1. This is a petition under Article 227 of the Constitution, assailing order dated 6.3.2023, whereby the learned Judge has rejected the application filed by the petitioner to frame additional issues.

2. Respondent nos.1 to 4- the plaintiffs in the suit have filed suit for eviction in respect of Plot No. 8B admeasuring 7 x 10 feet under C.S.No.145 of Mahim Division, Popatlal Wadi, Ranade Road, Dadar, Mumbai, which according to the respondents herein is an open plot of land which was tenanted to Ramchandra Sitaram Gavde. It is the case of the plaintiff that by agreement dated 04.03.1963 the said open plot of land was let out to Ranchandra Sitaram Gavde, the predecessor of the

petitioners herein, for a period of six months commencing from 01.01.1968. The respondent-plaintiff claimed that the tenancy in respect of the suit premises was determined vide notice dated 20.01.2009. The respondent-plaintiff therefore filed a suit for possession and mesne profit.

3. The petitioners have denied that the subject premises is an open plot of land. It is the case of the Petitioners that Ramchandra Gavde was a tenant in respect of shed no.6A admeasuring 10 x 7 sq. ft., situated on plot 8B since prior to 1968. The petitioners have also disputed genuineness of the agreement dated 4.3.1968.

4. Based on the pleadings of the respective parties, the learned Judge framed the issues. It is stated that evidence has been recorded, and when the matter was at the stage of final argument, the petitioner - defendants filed an application for framing additional issues. Being aggrieved by dismissal of the said application, the petitioners have filed the present petition.

5. In the course of hearing, learned Counsel for the Petitioner and respondent agree that the only relevant issue is whether the subject matter of the suit, which is described as suit premises, is an open plot of land. They concede that the issue in this regard is required to be

framed, instead of the three issues specified in the application at Exh.85. Learned Counsel for both the parties further concede that they have already adduced evidence relating to the said additional issue and have further stated that they will not adduce evidence in respect of the said additional issue. Learned Counsel for the respective parties also agree that all submissions covering any legal point will be advanced without there being any specific issue in that regard.

6. Hence, in addition to the issues framed on 31.08.2010, by consent, the following issue is framed:

“ (1A) Whether the plaintiffs prove that the suit premises when let out to late R.S.Gawde was an open plot of land?”

7. Petition stands disposed of.

(ANUJA PRABHUDESSAI, J.)