

Nikita

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

WRIT PETITION NO.7982 OF 2023

Chandadevi Jagadish Solankhe ... Petitioner

V/s.

Surendra Shankar Jangam and Anr. ... Respondents

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Mr. Drupad Patil a/w Ms. Bhakti Jain, i/b M/s. Nankani
& Associates for the petitioner.

Mr. Sandeep Koregave a/w Ms. Pallavi Karanjkar for
the Respondents.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 16, 2023

P.C.:

1. By this petition, under Article 227 of the Constitution of India, petitioner/original defendant No.1, is challenging an order passed for Order 14 Rule 5 of the Code of Civil Procedure, 1908. The respondent/Original plaintiff filed a suit for removal of encroachment, the defendant contested the suit. The defendant No.1 proposed following issues :

- 1) Whether suit is bad for non joinder of necessary suit properties ?
- 2) Whether suit is bad for non joinder of necessary party ?
- 3) Whether suit is barred by law of limitation ?
- 4) Whether suit is not tenable as plaintiff fails to seek all reliefs as per law?

2. The Trial Court based on nature of suit rejecting the application.
3. I have perused existing issues. Existing issues cast burden on plaintiff to prove the encroachment. Therefore, proposed issues have no relevance to the issues involved in the suit.
4. Insofar as the issue of limitation is concerned, pleadings in the written statement are not sufficient to raise issue of limitation.
5. Hence, in my opinion, the Trial Court has not committed any error of jurisdiction while rejecting the application of recasting of issues.
6. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)