

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11603 OF 2022

1. Omprakash Lalbahadursingh }
2. Hargovind Lalbahadursingh }
3. Vedprakash Lalbahadursingh }
All R/at Room No.36, Peru }
Compound, Dr.Ambedkar Road, }
Lalbaug, Mumbai-400012. }

...Petitioners

NILAM
SANTOSH
KAMBLE

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2023.03.21
18:07:23 +0530

Versus

1. Asha Dineshchandra Gupta }
wd/o. Dineshchandra Gupta }
R/at Gokul Building, 6th Floor, }
Flat No.22, Dr.Atmaram Merchand }
Road, Mumbai-400 002. }

2. Meghani Rajabali }
R/at Anand Estate, Junction of Dilile }
Road, 189, Sane Guruji Marg, }
Mumbai-400011. }

...Respondents

Mr.V.R. Tripathi, for the Petitioners.

Mr.S.A. Bhagwat i/b Mr.Sandeep S. Kumbhar, for the
Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16 MARCH 2023

JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of
both parties heard finally at the admission stage.

2. It is contention of the learned counsel for the Petitioner that Respondent No.1 filed declaratory suit against the landlord/original defendant and Petitioner/Original Defendant Nos.2 to 4, for declaration that she and Petitioner Nos.2 to 4 are joint tenants in respect of the suit premises.

3. The Petitioners have filed their written statement. In the Written Statement the Petitioners have stated that they are neither tenants nor have any rights in the suit premises. The Petitioner No.3 filed Application for dismissal of the suit against the Petitioners i.e. Original Defendant Nos.2 to 4. The Respondent No.1 filed reply to it. The Trial Court dismissed the Application below Exhibit-44, against said order this Petition.

4. The learned counsel further submit that when the Petitioners are not concerned with the suit premises and they are not claiming any right in the suit premises. They are not necessary party in the suit. But Trial Court has not considered this fact and passed impugned order. Hence, requested to allow the Petition.

5. It is contention of the learned counsel for Respondent No.1 that Petitioners have appeared before the Trial Court and have filed their written statement. They have partly

cross-examined the witness of Respondent No.1. Thereafter, they filed Application to dismiss the suit against them. The Trial Court has rightly dismissed the said Application. The order passed by the Trial Court is legal and valid.

6. I have heard both learned counsel. Perused impugned order passed by Small Causes Court, Mumbai (for short 'the Trial Court').

7. The Petitioners have filed an Application below Exhibit-34 before the Trial Court praying to dismiss the suit against the Petitioners i.e. Defendant Nos. 2 to 4, on the ground that there is no cause of action against them as they are neither tenants nor joint tenants nor interested in the suit premises. While dismissing the Application of Petitioners, the Trial Court has observed that admittedly, the Petitioners have filed Written Statement before the Trial Court. Issues are framed. The Respondent No.1 (Plaintiff) has filed her evidence affidavit below Exhibit-15. No cross order is passed against Defendant No.1 i.e. Petitioner No.1. The cross-examination has started on behalf of Defendant Nos.2 to 4 and it is part-heard.

8. The learned Trial Court further observed that the Written Statement was filed by the Petitioners on 18 April 2015 and the present Application moved on 9 November 2021, when

the Trial has already commenced and partial cross-examination is also conducted, which makes any prudent man to infer very easily that the present Application is simply filed for delaying the suit which is already more than five years old and the Plaintiff is a senior citizen. On that and other ground the Trial Court has dismissed the Application filed by the Petitioner, which is under challenge. I do not find any infirmity in it, as the Petitioners have already filed Written Statement before the Trial Court. They have cross-examined the witness of Respondent No.1. The Application below Exhibit-44 was filed after six years of filing the Written Statement. It shows that it was filed only to prolong the matter.

9. In view of above, the Writ Petition is devoid of merit and I pass following order.

ORDER

- (i) The Writ Petition is dismissed. No order as to cost.
- (ii) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)