

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13809 OF 2022

Shila Bhalchandra Bhagwat Since Decd.
Thr her heir & LRS. Pandharinath B. BhagatPetitioner
Versus
Prafulla Dattatraya PhadkeRespondent

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Mr. Anilkumar Patil i/b V. N. Bolinjkar Advocate for the Petitioner.
Mr. Akash Warang i/by Harshavardhan G. Khambete Advocate for
the Respondent.

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CORAM : S. G. DIGE, J.

DATE : 20TH FEBRUARY, 2023.

P.C. :

1. Heard learned counsel for petitioner and learned counsel for respondent.
2. Learned counsel for the petitioner submits that petitioner had filed application for framing the additional issues before the Civil Judge Senior Division, Thane (for short "The Trial Court").
3. The Trial Court has rejected the said application by passing impugned order below Exhibit-249.
4. Learned counsel further submits that Defendant No.1 got

the tenency right through his mother. The additional issues which were mentioned in the application were necessary to be framed as it would go to the root of the matter but this fact is not considered by the Trial Court. Hence requested to allow the application.

5. Learned counsel for respondent submits that the Trial Court has already framed the issues by order dated 2nd July 2011 below Exhibit 13. To prolong the matter, the present application was filed by the defendant. The order passed by the Trial Court below Exhibit-249 is legal and valid.

6. I have heard both learned counsel. Perused impugned order. The Applicant (Defendant No.2) as LR of Defendant No.1 wants to frame additional issues. Perused the proposed issues and written statement of Defendant No.2. Considering the written statement and proposed issues, it appears that the Trial Court has considered it and has framed the issues. Only the issue regarding whether the suit notice is legal and valid? is necessary to be framed and I pass following order.

ORDER

- I. Writ Petition is partly allowed.
- ii. The Trial Court is directed to frame the additional issue whether the suit notice is legal and valid? Accordingly,

Writ Petition is disposed of.

- iii. Leave to amend prayer clause is granted. Amendment to be carried out forthwith.

(S. G. DIGE, J.)