

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3322 OF 2022

Usha Sadashiv Rahatekar
Since deceased to legal heirs
1. Vinod Sadashiv Rahatekar & Anr.Petitioners

Versus

Sayaji Puroshottam Shirole & Ors.Respondents

Mr. Sarthak S. Diwan for the Petitioners.
Mr. Sumit Sonare for the Respondent No. 1.

CORAM : S. G. DIGE, J.

DATE : 2nd MARCH 2023.

P.C. :

1. Heard learned counsel for the Petitioners and learned counsel for the Respondents.

2. Learned counsel for the Petitioners has impugned order passed by the Small Causes Court, Mumbai below at Exhibit- '100'.

3. The learned counsel for the Petitioners submits that Petitioner had filed Application for framing additional issues. The trial court has framed one additional issue and has not framed the issue of ownership of the plaintiff, it is required to be framed. Hence, requested to allow the Application.

4. The learned counsel for the Respondents submits that Respondent No. 1 has filed suit against the Petitioner for eviction and mesne profit. The trial Court has partly allowed the Application of Petitioner and has framed additional issue. The petitioner is challenging the ownership of Respondent No. 1, he has no right to challenge the ownership of Respondent No. 1. In the suit filed by the Respondent No. 1 order passed by the trial Court is legal and valid.

5. I have heard both learned counsel, perused judgment and order passed by the trial Court. Admittedly the suit is filed by Respondent No. 1 against the Petitioner for eviction of suit premises. The tribunal has already framed the issue regarding the defense of Petitioner i.e. whether it is proved that, they have right for a further period of 99 years. The tribunal has framed additional issue whether

description of the suit premises is correct or not. In my view, in the suit filed by the Respondent No. 1, Petitioner cannot challenge their ownership only they have to prove before the trial Court that they are entitled for continuation of tenancy or not. The trial Court has rightly framed issues and additional issue. The order passed by the trial Court is legal and valid, no interference is required in it.

6. Writ petition is dismissed. No order as to cost.

(S. G. DIGE, J.)