

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO.4574 OF 2018

Satyanarayan Swarupnarayan
Khandelwal, Aged about 65 years,
Occupation : Business R/o Injini, Tah.
Mahagaon, Dist. Yavatmal (M.S)

...Petitioner

// VERSUS //

1. M/s Amar Krishi Kendra
Main Road, Warora, Tahsil Warora,
Dist. Chandrapur (M.S)
2. Shri Rajmal Jethmalji Deshlahra
Aged about 62 years, Occ. Business
R/o C/o Amar Krishi Kendra Main
Road, Warora, Ta. Warora, Dist.
Chandrapur

... Respondents

Shri S.N.Bhattad, Advocate for the petitioner.

Shri R.T.Anthony, Advocate for the respondent nos.1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 25th JANUARY, 2023.

ORAL JUDGMENT :

In this writ petition, the challenge is raised to the order below Exhibit No.50 dated 5th January, 2018 passed by the learned Civil Judge, Junior Division, Warora in Regular Civil Suit No.116 of 2012 refusing to recast the issue, is under challenge.

2. The issue which framed by the learned trial Court is that “Whether plaintiff proves that he is tenant of suit property owned by Shrikant Patil since 1980 ?” and issue which according to the petitioner

should be re-casted is “Whether the plaintiff proves that he is landlord and Defendant No.1 is tenant of suit premises.”

3. From the record, it can be seen that there is no dispute about the ownership of the suit property and therefore, the issue which is framed by the learned trial Court that whether the plaintiff proves that he is tenant of the suit property owned by Shrikant Pail since 1980, the same cannot be an issue for decision by the learned trial Court. However, without considering the same, the application came to be rejected.

4. In the present matter, the defendant has sub-let the property to a firm and in that view of the matter the request for re-casting of the issue ought to have allowed by the learned trial Court. In the circumstances, I pass the following order.

- i. The writ petition is allowed;
- ii. The order below Exhibit No.50 dated 5th January, 2018 passed by the learned Civil Judge, Junior Division, Warora in Regular Civil Suit No.116 of 2012 is hereby quashed and set aside and thereby application Exhibit No.50 is allowed.

[ANIL S. KILOR, J.]

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