

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

WRIT PETITION NO.319 OF 2020

(SANDEEP PANJABRAO CHANDRE & OTH....VS.. SMT. SHANTABAI NAGORAO CHANDRE & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Pushkar Deshpande, Adv. h/f. Shri D.R.Khapre, Advocate for Petitioners.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 11, 2023.

1. Heard.
2. In this petition the order rejecting application for framing of additional issue is under challenge. The application was rejected by the trial Court by recording reason that the issue No.3 covers the case of the defendant as regards adverse possession.

3. In the present case the facts are as under:

The father of the petitioners filed a suit for Declaration and Permanent Injunction. The declaration to the effect that he became owner of the suit property by way of adverse possession. The suit was partly decreed whereby the prayer of the plaintiff for declaration was denied and permanent injunction as regards possession was granted in favour of him, vide judgment and decree dated 24/07/2008 in Regular Civil Suit No. 42 of 1999.

4. Subsequently, the respondents filed Regular Civil Suit No.06 of 2014 for possession against the petitioners. Therein, again the original defendants have raised a plea of adverse possession and filed an application for framing of additional issues, which came to be rejected.

5. The learned counsel for the petitioners submits that though the declaration was not granted in favour of the original plaintiff (father of the petitioners) in the suit filed by the plaintiff. However, the petitioners are encroachers and are in adverse possession of the suit property and therefore, it is necessary to frame issue as regards the adverse possession. It is submitted that for non-framing of the issue as regards adverse possession this Court remanded the matter in the case of *Rukhamini ..vs.. State of Mah.*, reported in **2012(6) Mh.L.J. 679**. He has further relied upon a judgment in the case of *Biswanth Agarwalla ..vs.. Sabitri Bera*, reported in **(2009) 15 SCC 693** and a judgment in the case of *Rajendar Singh and others ..vs.. Santa Singh and others*, reported in **AIR 1973 SC 2537**.

6. In this case, admittedly, after decree of permanent injunction, from the year 2008 the petitioners are in possession of the suit property because of a judicial order.

7. A suit for possession was filed by the respondents wherein they have again raised a plea of adverse possession and which was already held against their father in the suit filed by him. Thus, considering the material available on record and on satisfaction, the learned trial Court refused to frame additional issue, as according to the learned trial Court, the said issue is not necessary.

7. In the circumstances, there is nothing to point out that the learned trial Court has not exercised the discretion judiciously and further as there is nothing to point out that there is any perversity in the impugned order, I am not inclined to interfere with the impugned order.

8. The judgments cited by the learned counsel for the petitioners are distinguishable on the facts and are not of much help to the petitioners in this case.

Accordingly, the writ petition is **dismissed**. No order as to costs.

JUDGE

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