



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8173 OF 2023

Mohd Rafiq Abdul Shakoor

VERSUS

The Sough Cental Railway Through
Its General Manager Nanded And Others

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Mr. A. D. Kasliwal, Advocate for the Petitioner

Mr. M. A. Golegaonkar, Advocate for Respondent Nos. 1
to 3

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. By consent of both sides, heard finally at
admission stage.

2. Petitioner takes exception to the order passed
below Exh. 35 in RCS No. 857/2018 rejecting application
for deletion of issue nos. 3 to 5.

3. Petitioner is plaintiff. Suit is filed for
declaration of title over the suit property and alleged
encroachment carried out by the Defendants concerned.

Learned Trial Court framed following issues:

- 1] Whether plaintiff proves his title over the
suit property?
- 2] Whether plaintiff proves the encroachment/
If yes, to what extent?

- 3] Is the suit maintainable?
- 4] Is the suit within limitation?
- 5] Has the suit cause of action?
- 6] Whether plaintiff is entitled to the reliefs claimed?
If yes, what?
- 7] What Order and Decree?

4. Plaintiff filed application vide Exh. 35 for deletion of issue nos. 3 to 5. Learned Counsel for the Plaintiff submits that the Counsel for the Defendants recorded no objection for the same. However, in spite of the said no objection, learned trial Court has rejected the application by imposing cost of Rs. 2,000/-. It is his submission that in any case imposition of cost is not justified.

5. There is no dispute about the fact that in the written statement issue of maintainability of the suit, limitation and want of cause of action are raised. Once there is pleading to that effect in the written statement, the Court is under obligation to frame those issues. It is immaterial as to whether the Defendants gives no objection for deletion of the said issues or not. In the facts of the case, deletion cannot be permitted and is rightly rejected by the trial Court.

6. Considering the fact that the Defendants had recorded no objection for deletion of issues, this Court finds it appropriate to set aside the cost imposed on the Plaintiff. As such, the Petition is partly allowed. The order of rejection of application Exh. 35 stands maintained. However, the order of imposition of cost Rs. 2,000/- is set aside. If cost is already paid, the same be refunded to the Petitioner.

(R. M. JOSHI, J.)

Malani