

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13518 OF 2023

Kashinath Barku Bhagat

Since Decd. Thr Legal Heirs

..... Petitioners

VERSUS

Sadashiv Tukaram Patange

Since Decd. Thr Legal Heirs

..... Respondents

Mr. Rohit D. Joshi for the Petitioners.

CORAM: RAJESH S. PATIL, J.

DATE : 28 FEBRUARY, 2024

P.C. :-

This writ petition challenges the order passed by the District Court on the application (Ex.10) in Regular Civil Appeal No. 266 of 2019.

2. The petitioners had filed eviction suit on the ground of 'non-user' and 'default'. The said suit of the petitioners was dismissed by the impugned judgment and decree dated 30 September, 2014.

3. Being dissatisfied by the judgment and decree passed by the Trial Court, the petitioners (original plaintiffs) preferred an

appeal before the District Court, Panvel. In the said appeal, an application was preferred by the petitioners for appointment of the Court Commissioner in order to bring the actual status of the suit property on record.

4. The District Court has noted that before the Trial Court, the plaintiff had examined the witnesses and also himself to prove the ground of non-user. So also, certain documents were produced. The defendants have examined witnesses. After considering the evidence on record, the Trial Court dismissed the suit.

5. The District Court further observed that the plaintiffs could have moved an application under Order 41 Rule 27 of the Code of Civil Procedure. The District Court also recorded that the plaintiff could have applied before the Trial Court when the suit was pending for appointment of the Court Commissioner for bringing the actual status on record but the same was not done.

In such a situation, the application preferred by the petitioner was rejected by the District Court.

6. The petitioner (original plaintiff) in order to prove his ground of eviction of non-user was free to bring on record the relevant evidence. It is the case of the petitioner/original plaintiff that the said record was brought on record. However, the Trial Court without considering the evidence on record, has dismissed the suit.

7. As the Trial Court, decree is under challenge, before the District Court the plaintiff had an opportunity to take such steps in law to prove his ground of 'non-user', the Appellate Court being the last fact finding court.

8. I find there is no perversity in the order passed by the District Court. Writ petition is dismissed.

[RAJESH S. PATIL, J.]