



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13250 OF 2025

Vandana Ravji Shinde (deceased)
through legal heirs and Ors.

... Petitioners

versus

Narayan Babu Ghagas

... Respondent

Mr. P.G.Sabnis, for Petitioners.

Mr. Sandeep Mishra with Ms. Madhura Mulay, Mr. Prakash Mishra, for
Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 4 NOVEMBER 2025

ORAL ORDER :

1. Heard the learned Counsel for the Petitioners.
2. The challenge in this Petition is to an order dated 21 February 2025, whereby the learned Civil Judge has deleted the issue No.3, initially framed by the trial Court to the effect, whether the Defendant proves his title and possession over the suit property.
3. The Petitioners have instituted the suit for declaration of title and the consequential relief of injunction to restrain the Defendant from causing obstruction to the possession and enjoyment of the Plaintiffs over the suit property. The trial Court had framed the issues of title and possession as well as the entitlement of the Plaintiffs to injunction upon proof of the

obstruction to the possession of the Plaintiffs at the hands of the Defendant, as issue Nos.1 and 2, and, thereafter, issue No.3 regarding the title and possession of the Defendant over the suit property was also framed.

4. Learned Counsel for the Petitioners invited attention of the Court to the contentions in the Written Statement, wherein the Defendant claimed to have acquired the suit property. It was submitted that, the view of the learned Civil Judge that, since the Defendant has not filed a counter claim, the issue regarding declaration of the title was not required to be framed is legally incorrect.

5. The Court is informed that the suit is now posted for judgment.

6. Since the suit is essentially for declaration of title and injunction to restrain the Defendant from causing obstruction to the possession and enjoyment of the Plaintiffs over the suit property, the primary burden would be on the Plaintiffs to establish title as well as the factum of possession. If the Plaintiffs succeed in proving their title, the question of the Defendant proving his title over the suit property would not arise. In that view of the matter, learned Civil Judge was justified in deleting issue No.3.

7. In any event, the suit is now posted for delivery of judgment. At this stage, the Court does not find any reason to entertain the Petition.

8. All questions would be open for adjudication, in the event a decree is passed against the Petitioners and an appeal is preferred thereagainst, under

Section 105 of the Code of Civil Procedure, 1908.

9. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)