

Order passed below Exh. 66 in R.C.S. No. 91/2015

(Dhondiram Patil V/s. Namdev Thorat)

CNR : MHSN05-000379-2015

Defendants have filed the present application suggesting additional issue and requesting to incorporate the same. They stated that, they have filed written statement at Exh. 60 and have raised a claim of tenancy over the suit property. So the plaintiffs cannot ask for possession in this suit for redemption. Issues have been framed at Exh. 62 and this issue of tenancy has not been framed. Hence this application.

2. Plaintiffs filed his say at Exh. 69 and strongly objected the application. They stated that the defendants have admitted the execution of mortgage deed on 29.05.1981. There is no reference to the tenancy rights in the said document. Already proper issues have been framed and there is no need to frame the present issue. Hence this application be rejected.

3. Heard both the Ld. advocates at length.

4. Original plaintiffs filed the present suit for redemption of mortgage dated 29.05.1981. The conduct of the defendants has to be taken on record before proceeding to ascertain their request for framing additional issue. Defendant Nos. 1 to 10 were duly served with the suit summons, but they did not appear. Hence the suit proceeded exparte against them. Thereafter, original plaintiff was reported dead and his legal representatives are brought on record by order below Exh. 18.

5. These plaintiffs thereafter examined one of the plaintiff Vijay at

Exh. 34 and thereafter have also examined three more witnesses at Exh. 47, 48 and 49. Thereafter, the defendant No. 3 filed application Exh. 55 and requested to set aside the ex parte order. That application was allowed on 16.03.2018 and his written statement (Exh. 60) was taken on record. Defendant Nos. 1, 2, 5 to 9 filed application (Exh. 56) for setting aside the ex parte order and that was allowed on 15.06.2018. They have filed pursis and thereby adopted the written statement (Exh. 60) filed by defendant No. 3. The concerned Court went on to frame issues at Exh. 62 on 19.06.2019. Meanwhile, the suit came to be transferred to this Court. The matter was kept for cross-examination of the plaintiff and witnesses. As these defendants again remained absent, no cross-examination order was pass. The defendants again filed application (Exh. 64) to set aside the said order and that has been allowed earlier.

6. This goes to show that these defendants dragged this matter from time and again on one or the other pretext. There has been great delay and the matter is now more than five years old. Ld. advocate for the plaintiffs cited all these incidents and also relied upon deed of mortgage. He submitted that, there is no reference to right of tenancy in the said deed and all these aspects are after thought. Ld. advocate for the defendants relied upon documents with list (Exh. 71) and stated that there is relationship of Landlord and Tenant.

7. So far the defendants appear to exceed the scope of the present dispute. The present suit is for redemption of one mortgage in between original plaintiff and Namdev Thorat, Dhondiram Thorat. The dispute is limited to that aspect and the Court is concerned

whether the relief of redemption can be granted. The defendants that too belatedly are trying to drag the matter by suggesting this issue. Certain documents indeed are filed with list Exh. 71. The defendants can demonstrate as to how their relationship with the original plaintiff or the present plaintiffs is not merely that of mortgagor and mortgagee. For that purpose there is no need to frame an independent issue and to refer the same. These defendants are also silent as to why they did not independently pursue their rights with the concerned authority. All these aspects and the scope of the subject matter does not necessitate such framing of issue. Hence the order follows,

ORDER

1. Application is rejected.

Islampur
Date: 04.02.2021

(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur