

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7568 OF 2014

Arun s/o Dagadu Bhesar
Age : 24 years, Occupation :
Agriculture, Residing at
Mandki, Taluka and District
Aurangabad

..PETITIONER

VERSUS

Eknath s/o Limbaji Bhesar,
Age 51 years, occupation :
Agriculture, Residing at
Mandki, Taluka and District
Aurangabad

..RESPONDENT

Mr Hemant Surve, Advocate for petitioner;
Mr Ramesh R. Imale, Advocate for respondent

CORAM : N.W. SAMBRE, J.

**(Date of reserving the
order : 12th January, 2015**

**Date of pronouncing the
order : 16th January, 2015)**

ORDER

By the instant petition, the petitioner/original plaintiff challenges the order dated 5th April, 2014, passed by Civil Judge Junior Division, Aurangabad, below Exh.31, in Regular Civil Suit No.1338 of 2012.

2. The petitioner/plaintiff instituted Regular Civil Suit No.1338 of 2012 seeking a decree for declaration and perpetual injunction. In the said suit, the petitioner moved application Exh.31 under Order XIV, Rule 1 of the Code of Civil Procedure for framing additional issues, which came to be rejected by impugned order dated 5th April, 2014. As such, present petition.

3. Mr Surve, learned Counsel appearing on behalf of the petitioner, while taking me through the pleadings, i.e. the plaint and the written statement, so also the issues framed at Exh.30, has strenuously urged that the additional issues sought to be framed were based on the pleadings of the parties. He submits that paragraphs 1, 3 and 9 of the written statement by defendant No.1 are relevant, which have prompted the petitioner to move an application in question for framing of additional issues. According to him, the said application is in tune with the provisions of Order XIV, Rules 1 & 3 of the Code of Civil Procedure. Learned Counsel submits that the reasons furnished by the learned Trial Court for rejection of the said application reflect non-consideration of the scheme of Order XIV of the Code and thus prays for allowing the writ petition.

4. While countering the above referred submissions, learned Counsel appearing on behalf of the respondent/defendant No.1 submits that the prayer in the plaint filed by the petitioner herein is relevant for the purpose

of consideration. According to him, the plaint in Regular Civil Suit No.1338 of 2012, claims relief of declaration that the registered sale deed No.1632, dated 29th March, 2001, executed by the deceased father of the plaintiff, namely Dagdu in favour of defendant No.1, is not binding and is unenforceable against the petitioner. He further urged that claim for perpetual injunction is made against defendant No.1. According to him, in the light of the pleadings in the plaint and the stand taken in the written statement, the learned Trial Court has rightly framed issues at Exh.30. He submits that the issues at Exh.30 are in tune with the pleadings of the parties and in accordance with the provisions of Order XIV of the Code of Civil Procedure and thus prays for dismissal of the writ petition.

5. After considering rival contentions of the parties, it is noticed that the plaintiffs have filed the suit for declaration that the sale deed dated 29th March, 2001 executed by his late father Dagdu, is not binding on them. In view of the same, the plaintiffs have also claimed relief of perpetual injunction against defendant no.1. In the light of the said prayer, the learned Trial Court has framed issues as, in view of the provisions of the Evidence Act, the burden is on the plaintiff to prove his claim.

6. The plaintiff has moved an application for framing of additional issues based on the plea raised by defendant no.1 in the written statement and perusal of the draft additional issues reflect that the plaintiff intends to

shift the burden on the defendant for proving the said claim.

7. In my opinion, for deciding the real controversy raised in the plaint, i.e. as regards the validity of the registered sale deed and entitlement to perpetual injunction, the petitioner/plaintiff has to stand on his own legs. Based on the claim of the petitioner, the Trial Court has framed issues at Exh.30, which take into account the approach of the plaintiff in entirety. Just because the defendant has filed written statement and countered the claim of the plaintiff, that does not mean that under Order XIV of the Code of Civil Procedure, burden stands shifted on the defendant to prove the contentions raised made in the written statement. It will be open for the learned Trial Court to draw appropriate inference based on the evidence adduced by respective parties in support of their pleadings in the light of the issues so framed.

8. Perusal of the plaint in Regular Civil Suit No.1338 of 2012 at page 10 reflects one more plaintiff, in addition to the present petitioner, namely, Dadarao s/o Dagdu Bhesar. Similar is the position about the defendant.

9. In the instant petition, the petitioner has impleaded only plaintiff no.1 and defendant no.1 as party. For aforesaid reason also, the writ petition, in my opinion, is not tenable as non-joinder of necessary party to the present petition is detrimental to the interest of the petitioner as the

order cannot be passed in absence of defendant no.2, adverse to his interest. In that view of the matter, the petition is liable to be rejected.

10. In the light of above, this Court is of the opinion that the present petition lacks merit and does not call for interference in extra-ordinary jurisdiction. The Writ Petition thus stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

amj