

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3048 OF 2015

Baburao Natha Navgire and Another ..PETITIONERS

VERSUS

Balu Rambhau Dehade ..RESPONDENT

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Mr. H.V. Tungar, Advocate for petitioners.

Mr. S.G. Shinde, Advocate for respondent.

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**CORAM : T.V. NALAWADE, J.
DATED : 28th SEPTEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made by Civil Judge, Junior Division, Aurangabad in R.C.S. No. 866 of 2011 on Exhibit 41. Heard both sides.

2. Aforesaid application was filed by original defendant for framing additional issues. He wanted following issues:-

“Whether the Gausiya Begum had perfect title or possession of suit property at the time of execution of sale deed bearing No. 5501 dt. 12/7/2011?”

“Whether 12-R land was separated from Gut No.84?”

“Whether the suit of plaintiff is hit for mis-joinder of parties?”

3. The learned Counsel for petitioner / original defendants submitted that in the past at least two of three issues were framed, but they were unnecessarily deleted by the Trial Court. He submits that these issues are necessary for decision of the dispute between the parties. He places reliance on reported judgment **2009(3) All MR 838 (Ajit Caitonde and Another Vs. Ezilda Emiliana Cristina Pinto (since deceased))**.

4. This Court has carefully gone through the plaint. The suit is filed for removal of encroachment of 12 R portion which is the part of Gut No.84. In the plaint, location of this portion which is allegedly encroached by defendant is given. It appears that in the past, issue was framed whether plaintiff proves that disputed portion is separated from Gut No. 84 by a road, but that issue is deleted. It can be said that when location of disputed portion is mentioned, there is no necessity of one more issue in that regard. The issues against the plaintiff that he is expected to prove the title over the disputed portion and he is expected to prove encroachment allegedly made by defendants are there. Thus, there is no necessity of such additional issue.

5. The case of the defendants that vendor of the plaintiff is necessary party is not acceptable. The issue regarding title of plaintiff proves everything. Thus, the application itself was misconceived. There are no merits in the petition. Petition stands dismissed. Interim relief granted by this Court is vacated.

(T.V. NALAWADE, J.)

SSD