

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5546 OF 2014

Macchindra Ambadas Raut ... Petitioner
Vs.
Kishan Anna Mule & Ors. ... Respondents

Mr. B.S. Kudale, Advocate for the petitioner.
Mr. S.J. Salunke, Advocate for respondents 3 to 6.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 20-07-2016.

Per Court :

1. Heard counsel for the appearing parties.
2. The petitioner is purportedly aggrieved by an order dated 13-03-2014 passed by Civil Judge Senior Division, Majalgaon on exhibit-86 in regular civil suit no. 158 of 2008. The petitioner who his plaintiff is before this court for his request under exhibit-86 to frame the issues suggested in the application stands turned down.
3. Mr. B.S. Kudale, learned counsel for the petitioner submits that the issues as have been suggested would be pertinent for the reason that from the pleading of the parties, the issues would arise, having regard to order rules under 14, since there are prepositions which are denied by the defendants. He submits that framing of these issues would throw light on the aspects which are

material in the suit for the defendants-vendors have sold more than the area which they had purchased and as such burden should be on the defendants to justify their ownership under the registered sale deed.

4. Learned counsel thus contends that although the learned judge has considered the issues which have already been framed may cover these aspects however, the framing of issues would go a long way in giving appropriate findings facilitating appropriate decision making.

5. Countering aforesaid submissions learned counsel Mr. Salunke appearing for respondents no. 3 to 6 contends that the application has been moved with a view to procrastinate proceedings, having been moved at the fag of end of the trial. He submits that even otherwise learned judge has considered that the suggested issues may be covered by the issues as have already been framed. He further submits that, it is the petitioner-plaintiff who shall have to shoulder the burden of discharging his claim of ownership over the suit property, in the circumstances, if he is in such a position, the issues as have been sought to be framed may stand ascertained. For said purpose it is not necessary that the issues should be explicitly framed.

6. Perusal of the impugned order shows that the learned judge has considered that the issues suggested have been amply

covered by the issues already framed and further that primarily the plaintiff will have to discharge his burden. It also appears to have weighed with the learned judge that the exhibit-86 has been moved while the matter had been posted for final hearing. The application had been moved at an interlocutory stage and learned judge has passed a reasoned order which cannot be said to be not adhering to judicial principles, or can be said to be patently improper.

7. It, therefore, appears that this is not a case fit enough to call for exercise of discretionary powers in favour of the petitioner. If the petitioner considers upon decision in the suit that non-framing of issues suggested has caused prejudice to him, such a matter may be amenable in further proceedings, having regard to section 105 of Civil Procedure Code. Writ petition as such stands rejected.

(SUNIL P. DESHMUKH)
JUDGE

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