

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

WRIT PETITION NO. 10978 OF 2016

Bandu Sahadu Kulange and Another ..PETITIONERS

VERSUS

Subhash Gangadhar Zine and Others ..RESPONDENTS

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Mr. N.C. Garud, Advocate for petitioners.

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**CORAM : T.V. NALAWADE, J.
DATED : 17th NOVEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made by learned Civil Judge, Senior Division, Ahmednagar on application at Exhibit 34 filed in Regular Civil Suit No. 397 of 2009. Heard learned Counsel for petitioner.

2. The application was filed by present petitioner for framing additional issues. The suit is filed by Respondent Nos.1 to 4 for relief of possession on the basis of sale deed. In that suit issues are already framed. Admittedly, the sale deed is executed in favour of these respondents by original owner – Bhausahab Bhingardive. It appears that

in favour of the present petitioners there was agreement of sale and present petitioners had filed Special Civil Suit No. 68 of 2004 for relief of specific performance of said contract. The said suit is dismissed by Trial Court and it appears that appeal is pending against the decision of the Trial Court. When agreement was there in favour of present petitioner, the property was sold by the owner in favour of the plaintiffs of Civil Suit No. 397 of 2009. In view of this circumstance, one issue was framed to the effect “Whether the purchaser like the plaintiff of suit no. 397 of 2009 can be treated as bonafide purchaser?” The aforesaid issue is answered in negative in Special Civil Suit No. 68 of 2004. In view of this circumstance in the present suit, the petitioners who are defendants in possession suit want that issue should be framed on the basis of finding given on the issue in Special Civil Suit No. 68 of 2004. They want following issue:

“2) *Whether the Plaintiffs have locus standi to file the suit in view of the finding recorded in Special Civil Suit No. 68 of 2004 that the present plaintiffs are not bonafied purchaser of the suit property?*”

3. The present suit is filed on the basis of title for possession. If the present petitioners have failed in the suit for specific performance and they are in possession and they want to protect the possession, circumstance like dismissal of suit filed for relief of specific performance

will be definitely required to be considered by the Civil Court in the present suit. In view of these circumstances and the nature of present suit, it cannot be said that the issue of aforesaid nature can be framed in the present suit.

4. Present petitioners want that other issues also need to be framed like necessity to pay proper court fee stamp. It was submitted that when the suit is filed for possession, the court fee ought to have been paid on the basis of value shown in sale deed. This submission is not at all acceptable. The property sold is an agricultural land and only on the basis of land revenue, the suit will be valued for the purpose of court fee. It can be said that only to protract the decision of the suit, tactics like filing of present proceeding are being played. There is no necessity to issue notices to other side. Petition is dismissed.

(T.V. NALAWADE, J.)

SSD