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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 3997 OF 2016

Mr. Mahendra Chintaman Mengde & Anr. ... Petitioners.

V/s.

Mr. Bhau Maruti Bhaygude
Since deceased per L.Rs. & Ors. ... Respondents.

Mr. Jaydeep Deo for the Petitioners.
None for the Respondents.

CORAM : N.M. Jamdar, J.

31 August, 2016.

Oral Order :-

The Petitioners challenge the order dated 9 December 2015 below Exhibit 125 in Special Civil Suit No. 852 of 2007 whereby the application filed by the Petitioner for deleting some of the issues which were re-casted, was rejected. The learned Counsel for the Petitioners submitted that the issue that was re-casted refers to the misrepresentation allegedly committed by Defendant No.1, however, the case of the Plaintiff does not refer to any misrepresentation but it is of fraud.

2. As regard the burden of proof is concerned, the learned Judge in the impugned order has clarified that it is the Respondent – Plaintiff who has to prove that the signature was obtained by misrepresentation. Therefore, the burden is not cast on the Petitioners. As regard the wording of this issue is concerned, in fact grievance if any, will have to be made by the Respondent – Plaintiff. If the Respondent – Plaintiff is not able to show that the deed was obtained by misrepresentation then it is the Respondent – Plaintiff who will have to face the consequences of framing this issue in such a manner. As regard the argument of the Petitioners regarding fraud is concerned that is on the merits of the dispute, merely because the issues are incorrectly framed does not mean that the parties have precluded from putting forth their case on merits.

3. The Petitioners are not prejudiced by the impugned order. Therefore, it is not necessary to entertain the Writ Petition, which is accordingly rejected.

(N.M. Jamdar, J.)