

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10008 OF 2017

YESHWANTA ASHRUBA BEDKE & ANR
VERSUS
TEJRAV TOTARAM KALAM

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Advocate for Petitioners : Shri Lakhotiya Pawan K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 24, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 6.6.2017, by which, the application Exhibit 17 filed by the plaintiff is partly allowed and by deleting issue No.3 originally cast on 2.8.2016, four issues have been recast by the impugned order.

2. For the sake of clarity, issue No.3 which was cast under Order 2.8.2016, reads as under:-

" Whether the defendants prove that suit property was given to the plaintiff for the payment of security towards money?"

3. The abovesaid issue has been deleted and by the impugned order, the following four issues have been cast:-

"(1) Whether defendant proves that, there was an oral agreement amongst the Bhaurao Mete and Ashruba Bedke about the sale transaction of suit property?

(2) Whether defendant proves that, there was an oral agreement amongst the plaintiff and defendant for purchase of the suit property in the name of plaintiff for the defendant?

(3) Whether defendant proves that, he had purchased the suit property for him by obtaining money from the plaintiff and got executed the sale deed in his name however plaintiff is not the owner of suit property?

(4) Whether suit is bad for non joinder of necessary parties?"

4. The petitioners do not have any objection in so far as the newly cast issue No.4 is concerned.

5. Shri Lakhotiya, learned Advocate appearing for the petitioners has strenuously criticized the impugned order. He has taken me through the entire pleadings of the litigating sides and has also cited the thirteen grounds formulated by him in this petition.

6. It is trite law that issues are cast after considering the rival pleadings of the parties, their averments and the documents placed before the Court.

7. In so far as the newly cast issue No.1 is concerned, the defendants have specifically averred about the oral agreement amongst Bhaurao and Ashruba, concerning the suit property. Having so pleaded, they have to prove the said aspect. Similarly analogy is applicable to the new issue No.2, regarding which, there are pleadings and averments of the defendants in the Written Statement. In so far as new issue No.3 is concerned, that was in fact covered by the original issue No.3. It, therefore, hardly matters, that it is reworded in the new issue no.3 instead of the original issue No.3.

8. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause gross injustice to the petitioner, keeping in view the law laid down by the Honourable Apex Court in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682].

9. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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