

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

WRIT PETITION NO. 9710 OF 2013

Vishal s/o Vijaykumar Pame
age 33 years, occ. agriculture
r/o Pathari, Tq. Pathari
Dist. Parbhani

.. PETITIONER

VERSUS

1. Shrinivas s/o Ramdayal Tawani
age 50 years, occ. business
r/o Hanuman chowk, Rajpal Medical
Majalgaon, Tq. Majalgaon,
Dist. Beed.
2. Jagdish s/o Ramdayal Tawani
age 56 years, occ. business
r/o Hanuman Chowk, Rajpal Medical
Majalgaon, Tq. Majalgaon
Dist. Beed.
3. Rameshwar s/o Ramdayal Tawani
age 52 years, occ. business
r/o Hanuman Chowk, Rajpal Medical
Majalgaon, Tq. Majalgaon
Dist. Beed.
4. Vedvanti w/o Ramdayal Tawani
age 70 years, occ. household
r/o Hanuman Chowk, Rajpal Medical
Majalgaon, Tq. Majalgaon
Dist. Beed.
5. Prema w/o Shamsundar Bhutada
age 45 years, occ. household
r/o Selu, Tq. Selu, Dist. Parbhani

.. RESPONDENTS

Mr. C.R. Deshpande, advocate for petitioner.
Mr. S.J. Salunke, advocate for respondents 1 to 5.

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**CORAM : S. B. SHUKRE, J.
DATE : 16th JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.
3. By this writ petition, the petitioner, original plaintiff, has questioned the legality and correctness of the order dated 30.09.2013 passed by the learned Civil Judge, Junior Division, Pathari in Civil Suit No. 98/2012 thereby rejecting the application filed by petitioner for framing of additional issue on the lines mentioned in the application dated 26.06.2013.
4. The issue that has been sought to be additionally framed by the plaintiff relates to an aspect of the case, which, according to the petitioner, has arisen due to certain assertions made in the written statement by respondents, original defendants. These assertions consist of defence of denial of the case of the petitioner that the sale-deed executed by him in favour of deceased Ramdayal Tawani was nominal, accompanied by submission that the sale-deed was legal and valid.
5. It is well settled law that the burden of proof lies on the party which asserts a fact and the fact is denied by the other party, provided the assertion of fact gives rise to a material preposition of fact or law. In the instant case, the case of the petitioner is very simple. It is his contention that the land was sold without any intention to sell and the sale transaction was to serve effectively only as the security for the underlying land transaction. The petitioner has nowhere pleaded that the land that was

sold by him was an ancestral property. If this is the case, any submission made by defendants in written statement that the land was sold also for a legal necessity, would carry no significance in law. This would be the case where the petitioner/plaintiff would be required to prove his case on his own. Even if the respondents do not establish their case regarding sale of the land for legal necessity, still it would not mean that the plaintiff has proved his case, given the fact that the petitioner has not approached the Court with any specific case that the property in question was ancestral. Therefore, I do not see any illegality or incorrectness in the impugned order.

6. The petitioner has placed reliance upon the case of Shankarlal Ramprasad Laddha Vs. Vasant Chandidasrao Deshmukh and others **2009(3) Mh.L.J. 959** wherein the learned Single Judge of this Court has held that when the purchaser has come with a specific case that the joint Hindu family property was sold for legal necessity, it was for him to prove his such case. In the instant case, it appears that no ancestral property is involved. Therefore, I do not think that this case law shall be of any assistance to the petitioner.

7. Learned counsel for respondents has referred the case of Nedunuri Kameswaramma Vs. Sampati Subba Rao **AIR 1963 Supreme Court 884** to support his contention that no prejudice would be caused if the issue sought to be framed by the petitioner is allowed to be framed by the trial Court. Again with due respect, I would say, this case is based upon its own facts wherein it is seen, the parties had gone to trial fully knowing the rival

case and even had led evidence not only in support of their own contention but also in refutation of the pleadings of other side and therefore, no prejudice was considered to be caused to either of the rival parties. In the present case, there is no averment on the part of the petitioner that the property in question was ancestral, resulting in an inference that there is no need to place any burden upon the defendants/respondents to prove their case that the land was sold for legal necessity.

8. In the result, the writ petition deserves to be dismissed. Writ petition stands dismissed. Parties to bear their own cost. Rule is discharged.

(S. B. SHUKRE)
JUDGE

dyb