

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

WRIT PETITION NO. 5863 OF 2015

Ravindra s/o Govindrao Deshmukh
Ardhapurkar, Age 42 yeas, occup.
Agril., r/o Ardhapur through his
General Power of Attorney Holder
Sow. Vaijantibai w/o Ashok Deshmukh
Ardhapurkar, r/o Swapnasagar Apartment, .. Petitioner /
Patnoorkarnagar, Nanded. Orig. plaintiff

versus

- 1) Vishnupatn Digamberrao Deshmukh
Age 64 years, occup. Business
- 2) Shashibhushan s/o Vishnupant Deshmukh
Age 34 years, occup. Business
**(W.P. is dismissed against respondent
no.2 as per order dated 16-03-2018)**

Both r/o Mathurai, N-8, Sai Park,
Behind Deogiri Bank, Cidco, Aurangabad

- 3) Shubhangi w/o Viushnupant Deshmukh,
Age 59 years, occup. Household,
R/o c/o S.S. Joshi, House Bhaokamkar Flat,
Sunita Park, Shivteerthnagar, near Kinare
Hotel, Kothrud, Pune 38
- 4) Khaja Karim Arjum s/o Mohd. Abdul Aziz
Age 30 years, occup. Business, c/o Shop 11,
12, 13, Ramgiri Complex, Near Yayak College,
Jalna Road, Aurangabad
- 5) Yakub Khan s/o Anwar Khan Pathan, .. Respondents/
Age 28 years, occup. Business, orig.defendant
R/o c/o shop 11, 12, 13, Ramgiri Complex, no. 1 to 5
Near Yayak College, Jalna Road, Aurangabad

Mr S. V. Chandole, Advocate for petitioner
Mr Y. K. Delmode, Advocate h/f Mr G. P. Shinde, Advocate for
respondents No. 4 and 5

CORAM : SUNIL P. DESHMUKH, J.

DATE : 11th September, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. Petitioner - plaintiff in special civil suit bearing no. 124 of 2006 is before this court aggrieved by order dated 31-12-2014 on application Exhibit - 160 whereunder his request, to have issues framed as referred to under Exhibit - 160 as additional issues, has been turned down by 2nd Joint civil judge, senior division, Nanded.

3. Petitioner - plaintiff had instituted aforesaid special civil suit seeking cancellation of sale deed and declaration of ownership in respect to suit land. It is claimed by petitioner that suit land has been owned and possessed by him and since he had to move to some other place, having regard to the circumstances, had given power of attorney to defendant no. 1, *inter alia*, to deal with the land as per desire of the petitioner.

4. It is being contended that the petitioner continued to be in possession of suit land and had not parted with the same to any one. However, defendant no.1 taking disadvantage of power of

attorney had purportedly dealt with suit land in favour of defendant no. 1 without taking into account desire of the petitioner. No consideration had been paid to the petitioner in respect of the transaction. Subsequently, vendee from defendant no. 1 had also dealt with suit land in favour of defendants no. 2 and 3 who in turn purportedly sold suit land to defendants no. 4 and 5 and as such, the suit referred to above ensued for cancellation of sale deed executed by defendant no. 1.

5. Defendants no. 1 and 2, and defendants no. 4 and 5 have submitted their respective written statements particularly with respect to averments in paragraphs no. 4 and 5 of the plaint and denied allegations by plaintiff and also denied that sale of the suit land had taken place by keeping the plaintiff in dark and contended that defendant no. 1 had given consideration amount of suit land to the plaintiff as per terms of document viz. power of attorney executed. It has been averred by the defendants that power of attorney holder had been delivered possession of suit land by plaintiff and that the power of attorney holder in turn had given possession of suit land to the purchasers.

6. Issues were cast at Exhibit - 157 on 18-04-2013. However, the issues with regard to defendants having proved

consideration amount paid to plaintiff or for that matter possession had been delivered by plaintiff to power of attorney holder or that averments by defendant no. 1 about him having paid consideration in respect of sale deed executed in favour of his son have not figured in the issues framed and the entire burden appears to have been put on plaintiff in respect of the averments in the plaint.

7. Application Exhibit - 160 had been moved by plaintiff for framing issues referred to in said application, as additional issues. However, said application has been rejected under order dated 31-12-2014 which is impugned in present writ petition.

8. Perusal of impugned order indicates that the trial court had been drifted away by the averment of plaintiff that he had not received any consideration amount and had not delivered possession to his power of attorney holder or for that matter purchasers from power of attorney holder and as such issues framed at Exhibit - 157 were considered to be proper and additional issues sought were considered to be not necessary.

9. Though learned counsel for respondents no. 4 and 5 has opposed request of the petitioner - plaintiff made under Exhibit - 160 yet, having regard to the pleadings of the parties, issues no. 1, 2 and 3 referred to in the application under Exhibit - 160

would arise between the parties. The learned judge, it appears, had fallen in oblivion of stipulations under Order XIV of the Code of Civil Procedure, 1908 about issues to be framed. It would be conducive in propagation of matter before trial court to have issues at 1, 2 and 3 referred to in the application Exhibit - 160 framed as additional issues, as it appears pleadings give indication of such issues would arise.

10. As such, impugned order dated 31-12-2014 passed by 2nd joint civil judge, senior division, Nanded is set aside. Application - Exhibit 160 to the extent of issues at 1, 2 and 3 referred to therein is allowed. The trial court, as such, to proceed with the suit accordingly.

11. Rule made absolute as aforesaid.

12. Writ petition is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-