

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

WRIT PETITION NO. 11296 OF 2018

**DAGDU SUKHDEO SHINDE
VERSUS
KRUSHNA ALIAS KRUSHNANATH ABHIMAN SHINDE AND
OTHERS**

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Advocate for the Petitioner : Shri M. D. Kale h/f.
Shri R. T. Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th OCTOBER, 2018.

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PER COURT :

1. The petitioner/original defendant No.2 is aggrieved by the impugned order dated 18/07/2018, by which, his application Exhibit 60 praying for framing an additional issue, has been rejected by the Trial Court.

2. The contention of the petitioner is that the plaintiff has filed RCS No. 412/2015 seeking a declaration of ownership and perpetual injunction against the respondents. The plaintiffs have contended that their father Abhiman Shinde had purchased the suit land from the original owner Narhari s/o Gena Shinde on 07/02/1979 by paying a consideration of

Rs. 4,000/- . The mutation entries have also been carried out on the basis of the sale and the 7/12 extracts also indicate the father of the plaintiffs as being the owner. The petitioner has denied the contentions of the plaintiffs in his written statement and has averred that Narhari Gena Shinde was not the original owner of the land.

3. Based on the above pleadings, the Trial Court has framed issue No.1 as "*who are the owner of the suit land ?*" and issue No. 4 as "*Whether plaintiff is entitled for declaration of ownership as prayed ?*"

4. The petitioner has moved Exhibit 60 contending that a specific issue needs to be caste by as like, whether these plaintiffs prove that Narhari Gena Shinde was the owner of suit land Survey No. 85/1 to the extent of 1 H. 00 R. The Trial Court has rejected the said application by concluding that one who is making a claim will have to prove that the purchase of the land is from a lawful owner and no person can give to anybody what he does not have. The Trial Court, therefore, concluded that it will have to prove as to who is the original

owner of the suit land.

5. In my view, the first issue clearly takes care of the apprehension of this petitioner and issue No. 4 would, therefore, mandate the plaintiff to prove his case before the Trial Court, if he is to be held entitled for the declaration of ownership. As such, the Trial Court may not have framed an issue to the liking of the petitioner, but the issues cast would take care of his grievance.

6. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-