

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION (ST) NO. 27694 OF 2018****Sou. Sadhana Yashvantrao Jagtap****..... Petitioner****VERSUS****Chandrakant Prakash Parit & Ors.****..... Respondents**

Mr. Shantaram A. Tarale for the Petitioner.

CORAM : R.D. DHANUKA, J.**DATE : 16th OCTOBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner (original defendant no.4) has impugned the order dated 16th August, 2018 passed by the learned trial judge below Ex.61 rejecting the application filed by the defendant no.4 in view of the order dated 18th July, 2018 on the ground that the learned trial judge has not framed additional issue as to whether the plaintiff prove that the sale deed dated 13th February, 2012 was without consideration.

2. The learned trial judge while rejecting the application (Ex.61) filed by the defendant no.4 has considered the issue no.4 already framed by the learned trial judge i.e. 'whether the plaintiffs prove that the sale deeds dated 13th February, 2012 are vague'. The learned trial judge has held that insofar as issue no.3 i.e. 'whether the defendant no.4 proves that the defendant nos. 1 and 3 have sold the suit properties for legal necessity of the joint family', the burden to prove the legal necessity and while proving the said issue, the defendant no.4

can prove that he had purchased the suit property from the joint family of the plaintiff and defendant nos. 1 and 3 for the valuable consideration.

3. In my view the defendant no.4 is fully protected and thus the learned trial judge has rightly rejected the application below Ex.61 by making such safeguard and by issuing such clarification in paragraph (4) of the impugned order.

4. I do not find any infirmity in the impugned order dated 16th August,2018 passed by the learned trial judge in view of the clarification already issued in paragraph (4) of the order.

5. Writ petition is devoid of merits and is accordingly dismissed.
No order as to costs.

[R.D. DHANUKA, J.]

Kanchan
Vinod
Mayekar

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