

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2760 OF 2019

Rama s/o Bapurao Sarak & others

Petitioners

Versus

Bansi s/o Dudha Sarak & others

Respondents

Mr. S.R.Choukidar, advocate for the petitioners.

Mr. A.G.Deshmukh, advocate for Respondents No.1.

None present for Respondents No.2 to 7, 10 and 11, though served.

Respondents No.8 & 9 deleted as per the Court's order dated 19.07.2019.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 07th August, 2019

PER COURT:

1 I have heard the learned advocates for the petitioners and Respondent No.1. Respondents No.2 to 7, 10 and 11, though served, have chosen to remain absent. Leave to delete Respondents No.8 and 9 has been granted earlier.

2 The learned advocate for Respondent No.1 has strenuously opposed this petition and prayed that the petition be dismissed with heavy costs.

3 The issue is as regards a specific plea taken by the plaintiff in paragraph no.8 in RCS No.09 of 2008 whereunder a

specific allegation has been levelled upon defendant no.13. It is averred that defendant no.13 has obtained the registered sale deed with regard to S.Nos. 50-E and 53-E, which were not in existence, by impersonating the plaintiff on 21.02.1986. By such impersonation, it was projected that the plaintiff has sold certain lands in favour of defendant no.13.

4 The issues were cast in the matter on 02.03.2010 and additional issues were cast on 22.12.2011.

5 The application Exhibit-194 was filed by these defendants no. 7 & 8, petitioners no.1 and 2, praying for framing of a specific issue in the light of the pleadings under paragraph no.8 of the plaint, by invoking Order 14 Rule 5 of the Code of Civil Procedure. By the impugned order dated 26.11.2018, the said application has been rejected on two grounds. Firstly, that issue no.3 would take care of the pleadings set out in paragraph 8 and secondly, that the said defendants have belatedly filed application Exhibit-194.

4 The learned advocate for the plaintiff – Respondent No.1 has strenuously supported the impugned order. His

contention is that there are pleadings as regards due diligence and as regards the circumstances which can be said to have precluded the petitioners from approaching the trial Court.

5 In my view, technicalities cannot over weigh the issues which need to be dealt with on their merits, as a decision would affect the final result in the suit in the background of specific pleadings set out in paragraph 8 of the plaint. The seriousness of the allegations levelled upon defendant no.13 and defendant no.10, cannot be ignored. The trial Court would have to decide as to whether the sale deed of 1986 was indeed obtained by impersonation and fraud. It is settled law that fraud vitiates all actions and its effect. If the fraud is proved, the said sale deed will have to be declared illegal and void. This cannot be done without framing a specific issue in view of Order 14 Rule 1(3) of the Code of Civil Procedure. I do not find that this aspect would be covered by issue no.3, "*whether the plaintiff proves that his 8 Anna share illegally sold by defendants?*" (reproduced verbatim).

6 In view of the above, this petition is allowed. The impugned order dated 26.11.2018 is quashed and set aside and the application Exhibit-194 is allowed. The trial Court shall frame the

following issue:

“Whether the plaintiff proves that defendant no.13 had obtained the sale deed dated 21.02.1986 by introducing a stranger to impersonate the plaintiff for selling that portion of land and whether defendant no.10 executed a sale deed dated 23.02.2005 in favour of defendant no.11 without he being the owner or possessor of the said land.”

7 Since the suit is more than 11 years' old, the trial Court shall decide RCS No.09 of 2008, as expeditiously as possible and in any case, on or before 31st March, 2020.

RAVINDRA V. GHUGE
JUDGE

adb/