

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2332 OF 2015

Shantaram S/o Totaram Sonavane,
Age 69 years, Occu : Business,
R/o LIC Colony, Ring Road,
Jalgaon,
District Jalgaon

.. Petitioner
(Orig. Deft. No.3)

Versus

- 1) Smt. Saraswatibai Bhagwan Sapkale
Age 70 years, Occu : House wife,
R/o Manraj Park, High Way No. 6,
Jalgaon, District Jalgaon
.. *(Deleted as per Court's order
dated 20-01-2016)*
- 2) Purushottam Bhagwan Sapkale,
Age 50 years, Occu : Agriculture,
R/o as above
- 3) Youvaraj Bhagwan Sapkale
Age 45, Occu : Labour,
R/o Joshi Peth, Jalgaon,
District - Jalgaon
- 4) Smt. Pramilabai Gokul Patil
Age 45 years, Occu : Household
R/o Manraj Park, High Way No.6,
Jalgaon, District Jalgaon
- 5) Kalpana Savalaram Ingale
Age 40 years, Occu. Household,
R/o As above
- 6) Sushilabai Bhagwan Sapkale,
deceased
- 7) Ramesh Bhagwan Sapkale,
Age 49 years, Occu : Business,
R/o Kombdi Bazar, Jilha Peth,
Jalgaon, Dist. Jalgaon
.. *(Deceased through Legal Representatives)*

- 7-1. Smt. Pushpa Ramesh Sapkale,
Age 57 years, Occu. : Household
(Wife of deceased)
- 7-2. Aruna Ramesh Sapkale,
Age : 37 years, Occu : Housewife
(Daughter of Deceased)
- 7-3. Vilas Ramesh Sapkale,
Age : 35 years, Occu : Labour
(Son of Deceased)
- 7-4. Manisha Ramesh Sapkale,
Age : 33 years, Occu : Housewife
(Daughter of Deceased)
- 7-5. Renuka Ramesh Sapkale,
Age : 30 years, Occu : Housewife,
(Daughter of deceased)
- 7-6. Yogeshwari Ramesh Sapkale,
Age : 28 years, Occu : Housewife
(Daughter of deceased)
- 7-7. Punam Ramesh Sapkale,
Age : 25 years, Occu : Housewife,
(Daughter of deceased),

All above R/o Kombadi Bazar,
Gatani Chal, 144, Jilla Peth, Jalgaon

- 8) Kishor Bhagwan Sapkale,
Occu : Business,
R/o Samta Nagar, Jalgaon,
District Jalgaon

.. Respondents
(R. Nos.1 to 5 Orig.
Pltffs. R.Nos.6 to 8,
Orig. Defts.)

...

Mr. Sanket S. Kulkarni, Advocate for petitioner
Respondent no. 1 deleted as per court's order dated 20-01-2016
Mr. S.H. Tripathi, Advocate for respondents no. 2 to 5
Mr. P.P. Kothari, Advocate for respondent no. 8

...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 28-01-2019

ORAL JUDGMENT :

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

2. Petitioner is defendant no.3 in regular civil suit no. 478 of 2001. Suit has been filed by present respondents no.1 to 5 seeking declaration that sale deed dated 20-12-2001 is null and void and to cancel the same as well as for setting aside decree in regular civil suit no. 157 of 2001 and declaring the same null and void and not binding on plaintiffs.

3. It appears to be a case wherein plaintiff no. 1's husband is Bhagwan Chindhu Sapkale and is father of plaintiffs no. 2 to 5 and it so happens that husband of defendant no.1 and father of defendant no. 2 bears name Bhagwan Chindhu Sapkale but he is claimed to be a different person from husband of plaintiff no.1 and father of plaintiffs no. 2 to 5.

4. Defendants no. 1 and 2 appear to have sold property which is claimed to be purchased by husband of plaintiff no.1 and he sold the property to defendant no.3. It also appears that defendant no. 4 got added as party who claims that his father as

well bore name Bhagwan Chindhu Sapkale and it is him who has purchased suit property.

5. It is in this context, while plaintiffs' averments are to the effect as referred to above and those have been resisted under written statement filed by defendants with a view to avoid confusion over as to which Bhagwan Chindhu Sapkale is referred to in issue no.2, the issue which would give rise to ambiguity, to make it specific, application Exhibit - 234 is moved but is rejected.

6. Learned counsel for respondents stiffly opposes the request under writ petition, contending that according to pleadings issue no.2 has been framed and does not require any alteration. It may not be a genuine necessity as is sought to be posed in writ petition.

7. Issue, as subsisting in regular civil suit no. 478 of 2001 is,

“ 2. Do the plaintiffs prove that deceased Bhagwan Chindhu Sapkale has purchased the suit property from defendant no. 1 on 25/11/1999”

and issue sought under application Exhibit - 234 is,

“ 2. Do the plaintiff prove that the husband of plaintiff No.1 and father of plaintiff no. 2 to 5 of deceased Bhagwan Chindhu Sapkale has purchased the suit property from defendant no. 1 on 25/11/1999”

8. However, looking at that while it is the case of plaintiffs that plaintiff no.1's husband and father of rest of plaintiffs has purchased the property, if the same is sought to be made specific, it is unlikely that would cause any particular prejudice to the parties concerned. The request is being made bonafide, such a request should receive its due.

9. Writ petition is therefore allowed and is disposed of. Impugned order dated 04-02-2015 passed by civil judge, senior division, Jalgaon in regular civil suit no. 478 of 2001 is set aside. Exhibit - 234 stands allowed and suit which has been pending since 2001 shall be proceeded with with extra expedition. Trial court may dispose of the suit preferably within a period of six (6) months from the date of receipt of writ of this order.

10. Amount deposited pursuant to initial order of this court, be appropriated towards the costs to be paid to plaintiffs.

11. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/