

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

WRIT PETITION NO. 6680 OF 2019

Baban S/o Ganpati Gawali

...Petitioner

Versus

Haji Shaikh Ismail Shaikh Mohammad

...Respondent

Mr. S.S. Gangakhedkar, Advocate for petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 11th JUNE, 2019

PER COURT:

1. The petitioner is aggrieved by the order dated 11th February, 2019 passed in Special Civil Suit No. 8 of 2015, by which the Trial Court has rejected an application Exh.58 filed by the petitioner-defendant and declined to cast an additional issue.

2. I have heard the strenuous submissions of the learned Advocate for the petitioner/original defendant and have gone through the petition paper book with his assistance.

3. The respondent-plaintiff has preferred a suit for seeking recovery of an amount of Rs. 16,57,500/-. The petitioner/defendant has stated in his written statement that the

plaintiff had entered into a sale agreement with the defendant for the consideration of Rs. 75,00,000/-. It is denied that the plaintiff had paid Rs. 15,00,000/- in cash to the defendant. In short, it is nobody's case that an amount of Rs. 75,00,000/- was paid by the plaintiff to the defendant through a cheque transaction and that the amount had been credited to the account of the petitioner-defendant.

4. It is a settled law that the rival contentions of the parties have to be considered by the Trial Court while framing the issues. One, who pleads, has to prove, is the principle. I have perused the issues cast by the Trial Court. Issue No.3 is, *"Whether the suit is bad for non-joinder of necessary parties ? "* Issue No.1 is, *"Does the plaintiff prove that he had entered into a contract to purchase the suit agricultural land from the defendant and in pursuance of the said contract plaintiff had paid Rs. 15,00,000/- to the defendant as earnest money and defendant had agreed to execute the sale deed in respect of suit agricultural land in favour of the plaintiff after receiving remaining agreed sale amount of the suit agricultural land from plaintiff and to handover the possession thereof to plaintiff ?"*

5. It is, thus, obvious that the Trial Court has placed the onus and burden on the plaintiff to prove that he has paid Rs. 15,00,000/- to the defendant. Neither has the plaintiff pleaded

that he has paid Rs. 75,00,000/- to the defendant nor does the defendant say that he has received any amount by cheque from the plaintiff.

6. As such, I do not find any justification for the defendant to pray to the Trial Court to frame an additional issue as reproduced in paragraph No.2 of application Exh. 58.

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

(RAVINDRA V. GHUGE)
JUDGE

Madkar