

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

WRIT PETITION NO.132 OF 2019

Anil s/o Ramkrishna Kale,
Age : 39 years, Occupation : Agri,
R/o Pisadevi, Tq.& Dist.Aurangabad.

...PETITIONER
(Orig. Defendant)

-VERSUS-

1 Subhash s/o Motilal Desarda,
Age : 69 years, Occupation : Agri,
R/o Plot No.77, Surana Nagar,
Aurangabad,
Tq. & Dist. Aurangabad.

2 Ratnamala w/o Subhash Desarda,
Age : 66 years, Occupation : Agri,
R/o As above.

...RESPONDENTS
(Orig. Plaintiffs)

...
Advocate for the Petitioner : Shri Mehta Punit S.
Advocate for the Respondents : Shri Bhadgaonkar Umesh A.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th December, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The petitioner, original defendant in Special Civil Suit

No.277/2016, is aggrieved by the order dated 14.11.2018 passed by the Trial Court by which, the application exhibit 51 seeking framing of additional issues, has been rejected.

3 I have considered the strenuous submissions of the learned advocates for the respective sides and with their assistance, I have gone through the petition paper book.

4 The grievance of the petitioner/ defendant is that the plaintiffs have averred in paragraph 7 of the plaint that on 10.07.2012, the defendant told the plaintiffs to execute a fresh registered agreement to sell showing the balance amount of Rs.40 lakhs as being the consideration for the suit land. The plaintiffs had no objection to execute such document through a registered deed. The plaintiffs gave the cheque dated 10.07.2012 for Rs.20 lakhs towards consideration and the residual Rs.20 lakhs were to be paid subsequently. The contention of the defendant, therefore, is that the plaintiffs will have to prove the legality of the fresh agreement dated 10.07.2012.

5 The learned advocate for the respondents/ plaintiffs submits that the defendant has not seriously opposed the contents of paragraph 7 of the plaint, though it is contended that the said payment was by misleading the defendant as being the payment for executing an "Isar Pavati". The defendant, therefore, alleged that the plaintiffs had played a fraud on the defendant.

6 Notwithstanding the above, the learned advocate for the plaintiffs submits that issue no.2 cast on 12.06.2018 has a wider compass and as the plaintiffs are required to prove that they have paid Rs.1,19,75,000/- to the defendant as payment of part consideration, the plaintiffs will also have to prove that the fresh registered document dated 10.07.2012 was executed by consensus by the parties. It is further pointed out that the Trial Court has also noted in paragraph 11 of the impugned order that issue no.2 is a comprehensive issue and would cover all agreements and the total consideration paid by the plaintiffs to the defendant.

7 In view of the above, I do not find that the impugned order rejecting exhibit 51 could be branded as being perverse or erroneous. This Writ Petition, being devoid of merit is, therefore, dismissed. Rule is discharged.