

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

WRIT PETITION NO. 10713 OF 2017

Baburao s/o Narayan Bhalke
Age : 74 years, Occ. Retired
R/o Chanda, Tq. Newasa
District Ahmednagar.

**PETITIONER
[ORIG.PLAINTIFF]**

VERSUS

1. Ramesh s/o Narayan Bhalke
Age 50, Occu : Service
R/o Front of the Hansmukh
Kirana Store, Vaidvadi, Savedi,
Tq. & Dist.Ahmednagar
- 2] Majid Abdulsattar Shaikh
Age 34, Occu : Agri.
R/o Chanda, Tq. Newasa,
Dist.Ahmednagar
- 3] Circle Officer,
Ghodegaon, Tq. Newasa
Dist.Ahmednagar
- 4] The Talathi
R/o Chanda, Tq. Newasa
Dist.Ahmednagar.

**RESPONDENTS
[ORIG.DEENDANTS]**

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Mr.R.B.Temak, Advocate for the petitioner
Respondent No.1 is served through paper publication.
Mr.S.S.Kotkar, Advocate for respondent no.2.
MrK.B.Jadhavar, A.G.P. for respondent nos.3 and 4

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CORAM : MANGESH S. PATIL, J.
DATE : 29/11/2021

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.G.P and the learned advocate for respondent no.2 waive service. At the request of both the sides the matter is heard finally at the stage of admission.

2] The petitioner is the original plaintiff who is claiming to be in exclusive possession of the suit property and seeking a declaration to that effect. He is also challenging the sale deed executed by the respondent no.1 in favour of the respondent no.2.

3] Based on the pleadings of the parties, by passing order on the application (Exh.46) moved by the respondent no.2 herein, who is the defendant no.4, preliminary issues were framed touching valuation of the suit, maintainability of the suit in view of principle of *res judicata*, under Order II Rule 2 of the Code of Civil Procedure as also in view of the bar contained under Order XXIII Rule 1 of the C.P.C. The petitioner made a request to permit him to lead evidence by moving application (Exh.64). By order under challenge the application has been rejected.

4] True it is that even order directing framing of the issues was under challenge before this Court in Writ Petition No.8292/2017 but it was withdrawn with liberty to the petitioner to move an application seeking permission of the trial Court to lead evidence.

5] Whatever may be the case, it is now an admitted fact that by passage of time the scenario has undergone a change. Section 9A of the C.P.C. has been deleted. Though the issues which were directed to be tried as preliminary ones are on the record, taking into account the fact that the suit was filed in the year 2016, it would be appropriate to direct the trial Court to frame all the issues including the preliminary ones which are already framed and try the entire suit by extending opportunity to both the sides to lead evidence, instead of now holding the trial in a piece-meal manner.

6] The Writ Petition is therefore disposed of with a direction to the trial Court to frame all the issues including preliminary issues and conduct the trial by extending opportunity to both the sides to lead evidence, as expeditiously as possible.

[MANGESH S. PATIL,J.]