

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4708 OF 2018**

Lakshmi Prakash Porwal .. Petitioner

Vs.

Rajkumar Sitaram Patil & Ors. .. Respondents

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Mr. Dr. Uday P. Warunjikar with Mr. Siddhesh Pilankar for the petitioner.

Ms. Rati Sinhasane i/b Mr. Umesh R. Mankapure for respondent No.2.

Mr. Prashant Chawan with Ms. Shraddha Chheda and Ms. Unnati Bane i/b Navdeep Vora & Associates for respondent No.3.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 14TH OCTOBER, 2021.

P.C:-

1. On the last date of hearing, it was recorded that the application for amendment moved by the plaintiff was allowed.

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2. Today, a copy of the amendment application vide Ex-67 and the order passed thereon are placed before me.

3. The order, when perused, would reveal that the application for amendment was allowed on the ground that during the pendency of the suit, defendant Nos.1 and 2 have created interest in the suit property in favour of Rajaram Bapu Sahakari Sakhar Karkhana Limited and as far as some portion is concerned, interest is created in favour of Warana Sahakari Doodh Sangh Limited. The pleadings are to the effect that the said premises were leased out to the aforesaid entities for their use of cold storage. The amendment is allowed and the Chairman of the two entities are added as defendant Nos.4 and 5.

4. Learned counsel for the respondent does not dispute the said documents.

5. When the issues, which are framed vide Ex-39 are perused, the burden is cast on the plaintiff to prove that she agreed to transfer, only the suit property 1-B, to defendant for Rs.8,40,000/- and another issue, which the plaintiff is to prove is whether defendant Nos.1 and 2, by playing fraud and misleading the plaintiff, got executed the assignment deed in respect of the suit property (1-A) on 12/03/2013 and whether the said assignment deed is void *ab-initio*.

6. My attention is invited to the written statement filed by defendant Nos.1 and 2, wherein the averments in the plaint are traversed and a specific stand has been taken by the defendants in paragraph Nos.21 to 25 in support of their contention that the assignment deed dated 12/03/2013 cannot be declared as void *ab-initio*. In furtherance of the written statement, certain additional issues are sought to be framed by preferring an application vide Ex-49 and the said application is rejected by the impugned order passed on 18/01/2018. The issues, which are sought to be framed as additional issues in the application are set out as under:

- “a) Do defendant No.1, 2 prove that there was an agreement amongst plaintiff, her husband and defendant No.1, 2 to alienate the suit property to defendant No.1 for consideration of Rs.91,00,000/-?”*
- b) Do defendant No.1, 2 prove that defendant have paid Rs.9,91,070/- to plaintiff on 4/2/2013?*
- c) Do defendant prove that they have paid Rs.8,00,000/-, 4,00,000/-, 9,00,000/-, 9,00,000/- and 8,68,950/- by cheques drawn on Hutatma Sah. Bank Ltd., Br. Islampur from the account of M/s. Unitech Industries Ltd., on 12/03/2013?*
- d) Do defendant prove that they have paid balance amount in cash to plaintiff on 12/3/2013 as stated in para 14 of the W.S.?”*

7. The learned Judge, however, rejected the said issues on the ground that the burden of proof in a suit lies on the plaintiff and the defendants shall not be called upon to discharge the burden. Learned Judge may not be correct as in the written statement, since the defendants have traversed the claim in the plaint and have set out a specific defence, the burden to prove that, shall always be discharged by the defendants though the burden of the plaintiff will not shift, but the onus may shift. However, by consensus, learned counsel for the petitioner and respondents state that the aforesaid issues, which are sought to be framed can be re-cast as under and they shall be permitted to be settled as additional issues, which will be in addition to the issues already framed vide Ex-39. The consensus is on the following issues:

a-1) Do defendant Nos.1 and 2 prove that there was an agreement amongst plaintiff, her husband and defendant Nos.1, 2 to alienate the suit property to defendant No.1 for consideration of Rs.91,00,000/-?

a-2) Do defendant Nos.1 and 2 prove that they have paid consideration by cheques and cash to the plaintiff and whether the balance amount in cash was paid to the plaintiff on 12/03/2013?

8. The trial court shall settle the aforesaid issues and permit the parties to lead evidence on the issues so settled. Since the suit is pending since 2014, attempts shall be made by learned Judge to expeditiously dispose of the same.

9. The writ petition is disposed of in the aforestated terms.

[SMT. BHARATI DANGRE, J.]