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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5618 OF 2014

Akbar Jamakha Mohamad Akhtar and Others PETITIONERS

VERSUS

Salehabegum Sayed Noorsahab RESPONDENT

.....

Mr. Jayant R. Patil, Advocate for the petitioners

Mr. Ravibhushan P. Adgaonkar, Advocate for the respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th MARCH, 2022

ORDER :

1. The petitioners are aggrieved by the order dated 30th January, 2014 passed by learned 3rd Joint Civil Judge, Senior Division, Ahmedpur, below Exhibit-112 in Regular Civil Suit No. 204 of 2008, thereby rejecting the application filed by the petitioners – defendants for framing additional issues.
2. The respondent filed the suit for declaration of ownership and perpetual injunction in respect of the suit property described in the plaint. In the suit, on the basis of the pleadings of the parties, the trial court framed 10 issues at Exhibit-56.
3. Application Exhibit-112 is filed by the defendants

contending that the plaintiff has alleged in the plaint at paragraph No.2 that, one Mohamad Akhtar Jamkhan s/o Md. Osman has agreed to sell suit land for consideration of Rs.40,000/- to the plaintiff and he has executed one agreement of sale with possession on 13th May, 1994 and he has executed agreement to sell in favour of the plaintiff. The said contention of the plaintiff has been denied by the defendants, by filing written statement. So, the burden lies on the plaintiff to prove the said allegations. However, issue in that respect is not framed and, therefore, issues in that behalf may be framed, which are as follows:

“Do the plaintiff proves that, the Md. Akhtar Jamkhan s/o Md. Osman has executed one agreement of sale with possession on 13.05.1994 of suit land in favour of plaintiff”

“Do the defendant proves that, the plaintiff have no locus-stand to file the present suit against the defendants.”

“Do the plaintiff proves that, she has agreed to sale price of suit land Rs.40,000/- but as per the valuation the consideration amount of Rs.28,000/- is shown in sale deed”

4. The said application is resisted by the plaintiff by filing detail say at Exhibit-115, *inter alia*, contending that in terms of sections 91 and 92 of the Indian Evidence Act, when the document is required in law to be registered, no oral evidence is

allowed to prove its contents other than the document itself. In the present suit, the plaintiff has produced original sale deed of the land dated 19th May, 1994 and this sale deed is acted upon. In that view, there is no provision in law to rely on agreement of sale, when the registered sale deed is already on record and, therefore, the application may be rejected.

5. The trial court rejected the application holding that the proposed issues No. 1 and 3 are covered by issue No. 1, which is framed in respect of the title of the plaintiff over the suit property. Therefore, this issue covers proposed issues No. 1 and 3. So far as the proposed issue No. 2 is concerned, though it is contended that the plaintiff has no *locus standi* to file the suit, there is nothing on record to show as how the plaintiff has no *locus standi*. When the plaintiff is claiming declaration and injunction on the basis of the registered sale deed, the proposed issue No. 2 is not necessary.

6. Heard the rival submissions of learned advocate for the petitioners and learned advocate for the respondent. Perused the notes of evidence placed on record.

7. It is the submission of learned advocate for the petitioner that as per provisos of Order XIV, Rules 1 and 2 of the Civil

Procedure Code, material propositions must be alleged by the plaintiff in order to show right to sue or defendant must allege in order to constitute his defence and each material proposition affirmed by one party shall and denied by the other shall form the subject matter of a distinct issue. He, therefore, submits that since the fact of execution of agreement of sale is specifically pleaded by the petitioners and the same is denied by the respondent, the proposed issues No. 1 and 3 ought to have been framed by the trial court.

8. Learned advocate for the respondents, on the other hand, strenuously opposed the prayer and supported the impugned order.

9. It is not in dispute that the sale deed dated 19th May, 1994 is already placed on record by the plaintiff. In that view of the matter, there is no propriety of framing an issue in respect of the agreement of sale dated 13th May, 1994. Issue No.1 framed is that "*whether the plaintiff proves that she has title over the suit property?*" and issue No.3 "*whether the plaintiff proves the obstruction as contended, at the hands of the defendants*", covers the proposed issues No. 1 and 3. The record does not show that any specific pleadings are raised in respect of *locus standi* of the plaintiff. In that view of the matter, there is no

necessity to frame proposed issue No. 2.

10. In the facts of the present case, the trial court has properly appreciated the contentions and has passed a reasoned order rejecting the application filed by the petitioners. There is no illegality, perversity or jurisdictional error in the impugned order passed by the trial court. No case is made out to warrant interference in the extraordinary writ jurisdiction. Writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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