

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

WRIT PETITION NO.13404 OF 2021

KRUSHNA AMBAR BACHALKAR
VERSUS
SHANTIDEVI RAMESHLAL GALANI AND OTHERS

...
Advocate for Petitioner : Kulkarni Mukul S.

...
CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 25TH, 2022

PER COURT : -

1. Heard the learned Counsel for the petitioner and perused the impugned order passed below Exh. 57 by the Jt. Civil Judge Senior Division, Dhule in Reg. Civil Suit No. 271 of 2013. The petitioner, who is impleaded as defendant no. 1 in this Reg. Civil Suit filed by the plaintiff, is seeking a declaration that the mortgage deed executed by him in favour of respondent no. 7 on 11.05.2005, and the consequential mutation entry is null and void. In the said suit so filed, on 10.09.2018 three prime issues came to be settled to the following effect : -

- (i) Whether plaintiffs prove that they are owner of the suit property?
- (ii) Whether plaintiffs prove that mortgage executed by defendant No. 1 in favour of defendant No. 2 in respect of suit property is illegal and liable to cancel ?

- (iii) Whether plaintiffs prove that Mutation Entry No. 16356 in respect of suit property is illegal and liable to cancel ?

2. Upon the said issues being framed, the defendant no. 1 sought framing of additional four issues, thereby casting a burden upon himself to prove issue nos. 1 and 2, and as far as issue no. 3 is concerned, he claims compensation of Rs. 1.00 lakh as contemplated under Section 35A of the Civil Procedure Code.

. On consideration of the said application, the learned Judge has rightly recorded that as far as Reg. Civil Suit No. 158/2003 is concerned, it is already decreed and the defendant no.1, who was a party to the said proceedings, did not prefer any appeal against the said decree, necessarily said decree binds him as well as his successor in the interest and therefore framing of the issue nos. 1 and 2 is irrelevant. As far as costs is concerned, there is no need for framing of issue and if depending upon the contingency of the claim raised by the plaintiff, the learned Court is empowered to award costs.

3. In the wake of the above, the application has been rightly rejected. Upholding the same, the writ petition is dismissed.

[BHARATI H. DANGRE]
JUDGE