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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3009 OF 2022

Sakharam Adinath Doke

PETITIONER

VERSUS

Vikas Raghunath Doke and Another

RESPONDENTS

.....

Mr. Mukul S.Kulkarni, Advocate for the petitioner

Mr. Shoyab Shaikh, Advocate for respondents No.1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order dated 5th January, 2022 passed by the learned Joint Civil Judge, Senior Division, Bhoom, below Exhibit-30 in Special Civil Suit No. 4 of 2017.
2. The respondents – plaintiffs filed the suit for possession, on the basis of sale deed. The petitioner – defendant appeared and resisted the suit, by filing written statement. In paragraph No. 21 of the written statement, a specific averment is made that at the time of execution of the sale deed in favour of vendor of the plaintiffs, bogus permission of the Collector was annexed along with the sale deed and in fact no such permission is granted by the Collector. In paragraph No. 22 of the written

statement it is averred that since the sale deed is of 4 Are area and since it is not of non agricultural land, the said transaction is hit by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

3. The Trial Court framed issues at Exhibit-28, wherein issue No.3 is - "*whether plaintiff's sale deed is legal and valid*". Since issue in respect of bogus permission of the collector and whether said transaction is hit by the Fragmentation Act, are not framed, the petitioner filed application at Exhibit-30 for framing of these two issues, as additional issues. Said application is turned down by the Trial Court by the impugned order.

4. Heard learned advocate for the petitioner and the learned advocate for the respondents. Perused the memo of writ petition, grounds raised in the same and the documents annexed along with the same.

5. Admittedly, there are specific averments made by the defendant in respect of the two proposed issues. The Trial Court has not framed issues in that behalf. The petitioner was justified in filing the said application proposing two issues i.e.

a. Whether the defendant proves that Nagu Ahire and Ashwini Doke annexed bogus permission of the Collector

under the Ceiling Act to the sale deed?

b. Whether the defendant proves that the sale deed of the plaintiff is hit by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act?

6. The Trial Court has proceeded to reject the application mainly on the ground that since the suit is filed for possession on the basis of title and issue in respect of legality of sale deed is framed, the issues suggested by the defendant are not necessary.

7. The approach on the part of the Trial Court in refusing to frame the additional issues proposed by the petitioner is erroneous, as the parties will be entitled to lead evidence only on the basis of the issues framed by the Trial Court. Since the two proposed issues have direct bearing on the case, the Trial Court ought to have framed the issues proposed by the defendant. The impugned order is, therefore, unsustainable and the same is liable to be quashed and set aside.

8. In the result, following order -

ORDER

- A. The writ petition is allowed in terms of prayer clause "A".
- B. Impugned order dated 5th January, 2022 passed by Joint Civil Judge, Senior Division, Bhoom below Exhibit-30 in Special Civil Suit No. 4 of 2017 is hereby quashed and set aside.
- C. Application Exhibit-30 is allowed.
- D. The Trial Court shall frame proposed additional issues and proceed with the trial expeditiously.

[NITIN B. SURYAWANSHI]
JUDGE