

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

WRIT PETITION NO. 13509 OF 2023

ANGAD SAMBHAJI MASKAR ALIAS YEVLE AND OTHERS
VERSUS
JANABAI MADHUKAR MOTE AND OTHERS

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Advocate for Petitioners : Mr. Tapse Ashok Ramdhan

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CORAM : SHAILESH P. BRAHME, J.

DATE : 30 OCTOBER 2023

PER COURT :

Heard.

1. Being aggrieved by the order dated 08.08.2023 below Exhibit-70 passed in RCS No.124/2017, declining to frame additional issues, the present petition is filed. The petitioners are original plaintiffs who are prosecuting RCS No.124/2017 for declaration, partition and possessions.

2. After recording of the evidence of the parties when the suit was posted for final argument, the petitioners moved application at Exhibit-70 for framing of additional issues. Learned Counsel for the petitioners submits that there are already pleadings and material on record to indicate that without there being any legal necessity, deceased Rajaram More had alienated. The suit land on 11.04.1969 in favour of respondent no.2. It is not binding upon the petitioners.

3. Learned Counsel for the petitioners has invited my attention to issues framed at Exhibit-37 which is at Exhibit-C to show that the issue pertaining to legal necessity has not been framed. He submits that in the absence of issue, the petitioners are unable to address on the legal necessity.

4. The application at Exhibit-70 is rejected by referring to issue no.4 which is already framed at Exhibit-37. The issue takes care of the case of the petitioners in respect of legal necessity and challenge to sale deed of 1969 and 2005. Learned Counsel for the petitioners is unable to persuade me that the view taken by the learned Judge in rejecting the application at Exhibit-70 is error of jurisdiction. It is clarified that it is open for the petitioners to canvass and agitate the challenge to the sale deed referred above on the ground of legal necessity which is within the purview of issue no.4 and 9.

5. In view of the above, no interference is called for in the impugned order. The writ petition is disposed of.

[SHAILESH P. BRAHME, J.]

Najeeb.