



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

WRIT PETITION NO. 14184 OF 2023

**SARASWATI SOPANRAO SAWANDKAR AND OTHERS
VERSUS
BAFAT BEGUM ABDUL RAZZAK AND OTHERS**

...

Advocate for Petitioners : Mr. Chavan Sudhir K.
Advocate for Respondent Nos. 1 to 4 : Mr. A.P. Gaikwad

...

**CORAM : SHAILESH P. BRAHME, J.
DATE : 20th DECEMBER 2023.**

Per Court :

- . Heard the learned Counsel for the litigating sides finally.
2. This petition is directed against the order dated 05.09.2023 below Exhibit-37 passed by the learned Joint Civil Judge, Junior Division, Parbhani in Special Civil Suit No.80/2022, allowing application for framing additional issue.
3. The petitioners are the original defendants. The respondents/ plaintiffs have filed Special Civil Suit No.880/2022 for cancellation of sale deed. Their pleadings are that sale deed executed on 18.02.2009 in favour of the petitioners, is bad in law. It is against the order of Deputy Collector dated 16.06.2007. There is no permission for executing sale deed but permission is to the extent of exchange of the lands. On various grounds, sale deed is challenged.

4. The petitioners have defended the suit by filing written statement. Considering the pleadings, the issues are settled at Exhibit-36. Issue no.3 as framed by the learned Judge, is as follows :

“Issue No.3 : Whether the plaintiffs are entitled to the relief of cancellation of the sale-deed?”

5. The respondent submitted application (Exhibit-37) seeking framing of additional issue as follows :

“Additional Issue : Whether the deceased Sopanrao Sawandkar had rightly got executed sale deed as per terms and conditions given by the Collector, Parbhani or not?”

6. The petitioners have opposed the application (Exhibit-37) by filing Say. By impugned order, application (Exhibit-37) was allowed and additional issue stated above is framed as Issue No.2A.

7. The learned Counsel for the petitioners submits that additional issue 2A, casts burden upon the petitioners who are defending the suit. Considering the pleadings in the plaint already an issue no.3 as stated above, is framed. A burden is upon the plaintiffs who have challenged the sale deed to prove how the sale deed is bad in law. The additional issue is not required. It is wrongly casting burden upon the petitioners/defendants.

8. The learned Counsel for the respondents supports impugned order. He would submit that the sale deed was executed in utter

disregard to the order dated 16.06.2007 issued by the Deputy Collector. There was no permission in favour of the present petitioners. Though there was a permission in the name of Abdul Razzaq and Sopanrao, it was for the purpose of exchange of land only. Learned Counsel has also informed that the evidence of plaintiff is underway and the petitioners are not cooperative.

9. I have considered rival submissions of the parties. I have gone through the plaint. The petitioners have challenged the sale deed and they have come up with prayer of cancellation of the sale deed. Considering the assertions in the plaint, the respondents are under obligation to prove that the sale in question is invalid. Therefore issue no.3 is rightly framed by the learned Judge.

10. By framing additional issue vide impugned order, burden is wrongly cast upon the petitioners who are defending the suit. Additional issue is not required. The controversy can be addressed in the context of issue no.3. In that view of the matter, I am of the opinion that the learned Judge has committed error of jurisdiction. The impugned order is unsustainable. Therefore, I am passing following order :

ORDER

(i) Order dated 05.09.2023 below Exhibit-37 passed by the learned Civil Judge, Junior Division, Parbhani in Special Civil Suit No.80/ is quashed and set aside.

- (ii) Application at Exhibit-37 stands rejected.
- (iii) The writ petition is disposed of accordingly.

[SHAILESH P. BRAHME, J.]

Najeeb.