



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

937 WRIT PETITION NO. 1016 OF 2023

Kallinath s/o Shivyogi Dhange.

...Petitioner

VERSUS

1. Rajendra @ Apparao Madhukarrao Vedpathak,
2. Dhanappa @ Baburao Revansidhappa Shahane,
3. The chief Officer, Municipal Council, Murum.

...Respondents

...

Advocate for the Petitioner : Mr. Shinde Abasaheb D.

Advocate for Respondent No.2 : Mr. S. N. Patne

None present for Respondent No.3.

...

CORAM : R. M. JOSHI, J.

Dated : June 25, 2024

PER COURT :-

1. This petition takes exception to order passed by Civil Judge, Junior Division, Omerga, dated 23/11/2022, passed below Exhibit 345, in Regular Civil Suit No.69/2017 whereby the prayer made by the plaintiff for recasting of the issues is rejected.

2. Learned Counsel for petitioner has drawn attention of the Court to the various concerned facts in this suit including the rejection of the application for filing written statement, the same being allowed by this Court and filing of written statement by defendant No.2 on 14/06/2022 before the Trial Court.

3. By referring to the paragraph No.3 of the written statement he submitted that in view of the said pleadings, the issue as to whether

the defendant No.2 proves that even after sale of property any space still remains for him and his father separately to be their property. The said application was opposed by the defendant No.2 and learned Trial Court rejected the said application.

4. Perusal of the record indicates that defendant No.2 has taken a plea in the written statement with regard to the sell of some of the portion from the suit property to defendant No.1 and that some portion therefrom still is with defendant No.2 but no counter claim is filed seeking any declaration in the report. As such, no issue is required to be framed to that effect for want of counter claim filed by defendant No.2. The issues framed by learned Trial Court vide Exhibit 32 are in consonance with the pleadings and issue framed, whether the plaintiff proves that he is owner and possessor of the suit property described in paragraph No.2 of the plaint ? sufficiently covers the alleged claim of defendant No.2 for its determination. No separate issue therefore was required to be framed, as such, the application is rightly rejected.

5. Hence, the petition has no merits, stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.