



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

70 WRIT PETITION NO. 506 OF 2023

P MANISHKUMAR DAMODAR

VERSUS

KESHAV RAMDAS KULKARNI SINCE DECEASED THROUGH LRS
SHOBHA KESHAV KULKARNI AND OTHERS

...

Advocate for the Petitioner : Mr. A. P. Bhandari

Advocate for Respondent Nos.1,3,4, 5-(A), 5-(B), 8 and 9 : Mr. K. J.
Ghute Patil

...

CORAM : R.M. JOSHI, J.

DATE : 16.12.2024

PER COURT :

1. This petition takes exception to the order dated 01.10.2022 passed by the trial Court in Special Civil Suit No. 10/2013 whereby application filed vide Exhibit 231 for challenging recasting of issues by plaintiffs i.e. petitioners came to be rejected.

2. Plaintiff filed suit seeking decree of specific performance of contract as per agreement to sale dated 27.11.2010 and execution thereof. Original Defendant Nos. 2 filed written statement which came to be adopted by Defendant Nos. 1 and 4. Since during pendency of proceedings Defendant Nos. 5 to 9 purchased suit property, they were arrayed as Defendants. These Defendants filed written statement. Learned Trial Court framed issues on 25.02.2011 vide Exh. 81.

Defendant Nos. 5 to 9 filed application Exh. 112 for framing additional issues. This application came to be rejected by Trial Court and Writ Petition filed against this order, resulted in withdrawal thereof. It is thereafter application Exh. 134 was filed by Defendant Nos. 5 to 9 for recast of issues. By order dated 01.08.2018 this application was allowed by Trial Court. Suit proceeded further and Respondent Nos. 1 to 4 herein failed to lead evidence. In such circumstances, Plaintiff filed application Exh.231 for further recasting of issues. This application is resisted by Defendants. Trial Court rejected the same. Hence, this Petition.

3. The learned counsel for the petitioner/plaintiff submits that the issue recasted by order dated 01.08.2018 is as to whether all defendants prove that signature of Defendant Nos. 1 to 4 were obtained on blank papers to create fraudulent document and extension of time is by fraudulent documents but defendant nos. 5 to 9 cannot be called upon to prove the correctness of documents which came to be executed before sale deed is executed in their favour. It is his submission that for want of locus standi these defendants cannot challenge the said documents on the ground that the documents do not bear signature of defendant nos. 1 to 4 and that documents executed for the extension of

time are fraudulent. He also submits that application Exhibit 112 filed by the defendant Nos. 5 to 9 came to be rejected by the trial Court on 06.07.2017 with observation that at no point of time Defendant Nos. 1 to 4 have contended the alleged agreement of sale dated 27.11.2010 is fraudulent document nor even it is so contracted by defendant nos. 5 to 9.

4. Learned counsel for the contesting respondents supported the impugned order.

5. There is no dispute about the fact that the defendant no. 2 filed written statement with specific averment in paragraph 7 that defendant no. 1's thumb impression is obtained on blank paper while he was ill. It is further averred in paragraph 11 of the written statement that plaintiff misused the signature obtained on blank papers to prepare documents in question. This written statement is adopted by defendant nos. 1 and 4. Similar is written statement of defendant nos. 5 to 9 and the averments in this regard could be found in paragraph 7 thereof. The issues are required to be framed on the basis of averments of the parties and since there is specific stand taken in written statement with regard to the validity of documents concerned, the Trial Court was

justified in framing issues accordingly. It is altogether different as to whether defendant nos. 5 to 9 would be in a position to prove the said contention. Obviously, the said aspect about their absence in transaction prior to sale deed in their favour would be a matter relevant for being taken into consideration by the Trial Court while deciding the suit on merits. Since issues framed are in consonance with the pleadings, no fault can be found with the order of rejection of application Exh. 231 filed by plaintiff.

6. In view of above, there is no merit in the Petition. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)

shp