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

31 WRIT PETITION NO. 3967 OF 2025

**BHIMA PARASRAM TUWAR DELETED AND OTHERS
.....Petitioners**

VERSUS

VENUBAI EKNATH TUWAR

.....Respondent

Mr. C. K. Shinde, Advocate for the petitioners
Mr. Z. M. Pathan, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 05th MAY, 2025

P. C.

1. Heard.

2. This petition is taken up for final disposal by consent of the parties.

3. The petitioner-original defendant is aggrieved by the order passed on application Exh. 195 in RSC No. 270/2006 by the learned Joint CJJD, Newasa dated 16-01-2025. By way of impugned order the application of the respondent-original

plaintiff came to be allowed for framing additional issue as to whether defendants prove that the registered sale deed dated 05-03-2003 is a mortgage deed?.

4. The learned advocate for the petitioner vehemently argued that said issue was not necessary for the purpose of deciding the suit. It is submitted that when it is the case of the petitioner that it is only for the plaintiff to prove that sale deed is valid and legal. Onus cannot be put on the defendants to prove the documents as mortgage deed. Onus of the defendants at the most can only shows that sale deed is not validly executed. He, thus, submits that the learned trial court has committed an error in allowing the application of the plaintiff. He submits that suit is of 2006. The written statement was filed in 2008. At the fag end of the trial at the stage of argument, the plaintiff field an application. On this count also the learned trial court ought to have rejected the application and prays for allowing the petition.

5. The learned advocate for the respondent submits that looking at the written statement, it is clearly seen that it is the case of the defendants that their signatures on sale deed were obtained by representing the documents as document of mortgage. He, thus, submits that it is the case of the defendants only that it was signed as mortgage deed and the learned trial court has rightly framed the issue putting burden on the defendant. So far as delay is concerned, he submits that additional issue can be framed at any of the trial in view of the order 14 Rule 5. He relies on the following judgments:

- i. *Jairam P. Kamat Vs State Bank of India and others*¹
- ii. *Gangai Vinayagar Temple and another Vs Meenakshi Ammal and Ors*²
- iii. *Shri Ajit Gaitonde and Anr Vs Smt. Ezilda Emiliana Cristina Pinto*³
- iv. *M/s. Shraddha Associates and Anr Vs St. Patrick's Town Cooperative Housing Society Ltd and Ors*⁴

6. In the case of Jairam (Supra) this court had remanded the matter for further trial to frame issues afresh in the light of pleadings of defendant therein and to decide the

1 1997(2) BCJ 440

2 2015 ALL SCR 3586

3 2009(3) ALL MR 838

4 2003(1) ALL MR 674

matter afresh. This was done in view of specific pleadings of the defendant. It was observed that though there was specific pleadings no specific issue was framed in the light of the pleadings. In the case of Gangai (Supra) the Full Bench of the Hon'ble Apex Court held that the court is expected to peruse the pleadings of the parties in order to extract their essence, analyse the allegations and contents of the documents produced by the parties and thereafter proceed to frame the issues. It is held that it is obligatory to frame issues. The duty is cast on the court to settle the issues constitute and crystallization of the conflict or distillation of the dispute between the parties.

7. In the case of Ajit Gaitonde (supra) the Division Bench of this court held that not framing proper issues is the defect in the trial and certainly that affects the rights of the parties to the suit adversely. In the case of Shradha Associates (supra) again it is held that framing of issue is an obligation of court in order to find out the nature of the controversy between the parties.

8. In the light of above it is clear that the it is the duty of the court to find out the exact dispute and to decide the same. In the case of *Shraddha (supra)* it is also held that provisions of order XIV and Rule 5 are clear. The issues can be modified at any stage of the proceeding. In view of this, this court finds that merely because application for framing of issue is at fag end of the trial that itself could not be a ground to reject the application. This court, therefore, does not find any substance in the grounds raised by the petitioner that the application at the fag end of the trial. In the present case it is clear that the petitioners themselves have come with specific case that they have signed the document as mortgage deed. Therefore, it is not the case that there is no document executed at all. When the petitioner accepts that the document was executed and when it is their case, that it was not signed as sale deed, then, certainly it is for them to prove their case. The trial court has rightly considered this aspect. It is well settled position that it is for the parties to prove the fact who asserts it. This court therefore, do

not see any illegality and perversity in the order. The trial court has rightly considered the application and in view of the pleadings of the parties and have passed the order.

9. For all these reasons this court finds that the learned trial court has not committed any illegality or perversity. The impugned order therefore does not require any interference at the hands of this court. There is no merit in the petition and same is hereby dismissed. No order as to costs.

10. The learned trial court is expected to complete the trial within six months from today.

[KISHORE C. SANT, J.]

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