



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

WRIT PETITION NO. 5425 OF 2024

Dinesh s/o Shenphadu Bhirud,
Age: 47 years, Occu. Agriculture,
R/o. Bamnod, Taluka Yawal,
District Jalgaon.

.....PETITIONER
(Original Defendant)

VERSUS

Sau Sunanda w/o Chandrakant Talele
Age 60 years, Occu. Agriculture
R/o. Through her GPA
Shri Chandrakant s/o Bhagwat Talele
Age 64 years, Occu. Agriculture
R/o. Bamnod Taluka Yawal,
District Jalgaon.

.....RESPONDENT
(Original plaintiff)

Mr. R. R. Imale, Advocate for the Petitioner
Mr. A. M. Gholap, Advocate for Respondent

CORAM : ROHIT W. JOSHI, J.

DATED : 26TH JUNE, 2025

ORAL JUDGMENT :-

- . Rule. Rule made returnable forthwith.
2. Heard finally with the consent of the parties.
3. The present petition is filed by the original defendant, who is partly aggrieved by order dated 27.07.2023, passed by the learned Joint Civil Judge Junior Division, Yawal on application for framing additional issues filed by him vide

application at Exhibit 23 in Regular Civil Suit no.06 of 2021.

4. The respondent, who is the original plaintiff has filed a suit for removal of encroachment and possession with respect to land admeasuring 0.34HR, which according to the respondent/plaintiff is in wrongful possession of the defendant/petitioner.

5. The defence of the petitioner/original defendant is that he is in possession of the said portion on the basis of two sale deeds dated 02.06.1958 and 21.02.1969.

6. The learned Trial Court vide impugned order dated 27.07.2023, framed issue with respect to sale deed dated 02.06.1958. However, the said additional issue framed by the learned Trial Trial Court does not refer to sale deed dated 21.02.1969, although, the defence of the petitioner/defendant is based on both these sale deeds.

7. Learned Counsel for the petitioner therefore makes a submission that one issue is required to be framed with respect to the other sale deed dated 21.02.1969 also.

8. Per contra, the learned counsel for the respondent/plaintiff contends that the issues, which are framed by the learned Trial Court initially cover all the points

of dispute between the parties and as such, there was no need to frame the additional issue that has been framed by the learned Trial Court. He further contends that the petition is filed only in order to arrest further progress of the suit.

9. Having heard the rival submissions, in my considered opinion, once the learned Trial Court found that it was necessary to frame additional issue with respect to sale deed dated 02.06.1958, issue should also have been framed with respect to the other sale deed dated 20.02.1969. Perusal of the order does not disclose any reason for not framing issue with respect to the other sale deed. It rather appears to be an outcome of oversight and inadvertence.

10. In that view of the matter, the petition is **partly allowed**. The additional issue will read as under:

“Whether the defendant proves that, he has become owner of survey No.126 area 3.27 HR of Mauja Bamnod, Tq. Yawal, by way of registered sale-deeds dated 02.06.1958 and 21.02.1969 and he is in possession since then.”

11. Parties to bear their own cost.

(ROHIT W. JOSHI, J.)