

Reg.Civil Appeal No.185/2013*(CNR No.-MHKO010013372013)***Order below Exh.28**

Respondent no.3/original defendant no.3 has filed this application under Order 14 Rule 5, C.P.C. to frame following issues -

1. Whether plaintiff proves that he is an agriculturist ?
2. Whether plaintiff proves that description of the suit property is correct ?

02. The appellant is the original plaintiff. Respondents 1 and 2 are original defendants 1 and 2. In Spl.Civil Suit No.204/2008 the appellant sought specific performance of agreement of sale dated 1-2-2008 said to have been executed in his favour by respondent no.1. He further sought relief of cancellation of sale deed dated 21-5-2008 executed by respondents 1 and 2 in favour of respondent no.3. In the alternative, the appellant, sought relief of refund of earnest amount. Subject matter of agreement of sale dated 1-2-2008 and sale deed dated 21-5-2008 is one and the same.

Respondents 1 and 2 and respondent no.3 denied case of the appellant in toto, including his status as an agriculturist and description of the suit property, by filing separate written statements. Respondent no.3 further pleaded that she was a bonafide purchaser for value without notice.

Before the Trial Court the parties led evidence. Submissions were heard. The Trial Court framed issues and answered the same as follows.

1	Does plaintiff prove that on 1-2-2008 the defendant no.1 accepted Rs.1,11,000/- and executed agreement for sale in his favour ?	Yes.
2.	Does plaintiff prove that the sale deed executed by defendant nos.1 and 2 in favour of defendant no.3 regarding the suit property on 21-5-2008 is illegal and wrong ?	No.
3.	Does plaintiff prove that he was always being ready and willing to get executed sale deed of the suit property ?	No.
4.	Whether plaintiff is entitled for the execution of the sale deed of the suit property ?	No.
4A.	Whether plaintiff is entitled for the cancellation of the sale deed dated 21-5-2008 ?	No.
4B	Whether plaintiff is alternatively entitled for the compensation of Rs.4,51,325/- and the interest at the rate of 18% p.a.?	No.
5	Whether plaintiff is alternatively entitled for the refund of Rs.1,11,000/- with the interest at the rate of 18% p.a.?	Yes, but entitled to recover the amount @ 6% p.a.
6	What order and decree ?	As per final order

Consistent with aforementioned findings the Trial Court passed the decree.

03. Shri.Ghatge, learned advocate for respondent no.3 invited attention of the Court to paragraphs 2,7 and 13 of her written statement. In para 2 description of the suit property including its boundaries as given in the plaint was denied. In para 7 respondent no.3 pleaded that she owns agricultural land. In paras 7 and 13 she pleaded that the appellant is not an agriculturist and he does business of money lending.

04. In reply, it was submitted by Shri.Kapase, learned advocate for the appellant that there is collusion between respondent no.3 and respondents 1 and 2, respondent no.3 was not a bonafide purchaser for value without notice, as per application Exh.46 filed in the Trial Court additional issue was framed, from observations made in paras 10 and 11 it can be gathered that the respondents have not disputed description of the suit property, there is material to show that the appellant is an agriculturist and for all these reasons the application deserves to be rejected.

05. I have considered rival submissions and perused record of the case.

06. The Trial Court accepted contention of respondent no.3 that she was a bonafide purchaser for value without notice. However, presently question is not whether this finding is sustainable but whether additional issues as proposed by respondent no.3 are required to be framed.

07. From pleading of respondents 1 and 2 as well as respondent no.3 it can be gathered that they have specifically denied description of the property. In para 11 of the judgment the Trial Court observed that respondents 1 and 2 had admitted description of the suit property but only disputed its boundaries. Needless to say that description of the suit property would also include its boundaries.

08. Application Exh.46 filed by respondent no.3 was confined to framing issue on the point whether respondent no.3 was a bonafide purchaser for value without notice. Said application was allowed and issue no.2A was framed.

09. Adv.Shri.Kapase invited attention of the court to list Exh.59 with which two 7/12 extracts are placed on record. As per these extracts the appellant owns agricultural lands at Kansewadi and Vikaswadi. It was submitted that considering these documents issue as to whether the appellant is an agriculturist need not be framed. It may be mentioned that the Trial Court only allowed production of these extracts subject to strict proof of contents of the same. Record of the Trial Court shows that these extracts were not admitted in evidence.

10. It is a matter of record that the respondents specifically denied plaint averments regarding description of suit property and further pleaded that the appellant was not an agriculturist. Since the contesting parties were at variance

on both these points issues covering the same ought to have been framed. To plug this lacuna instant application deserves to be allowed. Hence the order -

Order

1. Application is allowed.
2. Issues regarding description of suit property and status of the appellant as an agriculturist, as proposed by respondent no.3 be framed.

Date : 08-01-2018

Sd/-
(M. A. Lovekar)
Principal District Judge, Kolhapur