

MHNG100002972012



ORDER BELOW EXH 52 IN RCS.No.53 of 2012

(Date: 16/12/2025)

This is an application filed by plaintiff for recasting of issues under order 14 rule 5 read with section 151 of the Code of Civil Procedure.

2. Plaintiff contended that plaintiff seeks specific performance of agreement of sale dated 10/08/2004 as could be seen from the averments made in para No 1&3 of the plaint. The defendants have filed their written statement and in para No 1&8 and para No 2 of specific pleading of written statement it shows that the defendant have admitted the execution of aforesaid agreement, however, they have come with a case that it was not to be acted upon and it was executed allegedly for security purpose for the amount paid by the plaintiff to the defendant.

3. It is further contended that this could frame issued No 1 which contemplated & cast burden on the plaintiff to prove that the defendant have entered into an agreement to sale of the suit property. Though agreement of sale has been admitted by the defendant it would not be necessary to call upon the plaintiff to

prove the same and as such the said issue No.01 needs to be deleted. Defendants have come with a case that the said agreement was executed allegedly for security purpose and was not to be acted upon, a burden has to be put on defendant to prove that the said agreement was executed for security purpose and was not to be acted upon. Hence, purposed issues mention in the application which is as under to be framed i.e. **whether defendant prove that the agreement to sale was executed allegedly for security purpose and was not to be acted upon?**. Hence, he filed this application to delete first issues and recast aforesaid issue accordingly.

4. On the other hand, defendants filed their say below Exh.52 and strongly oppose the application. It is further contended that the plaintiff has filed the instant suit for specific performance of contract and it is alleged in the suit by the plaintiff that defendant has executed agreement to sale of the suit property. As the plaintiff has alleged about the said agreement on which this court has already frame issued as such these issues are proper and thereby prayed to reject the application.

5. Heard learned advocates for both sides. Perused the application and record of the case.

6. After going through application and record of the case it appears that my learned predecessor has already framed issue at

Exh.16. The plaintiff contented that the defendant in para NO 1&3 and para NO 2 of specific pleading in written statement admitted the execution of agreement of sale, however, they have come with case that it was not to be acted upon and that it was executed allegedly for security purpose for the amount paid by the plaintiff to the defendant. Hence burden required to be caste on the defendant to prove alleged facts. Whereas defendant opposed the application on the ground that the present suit is file for specific performance of contract and issues frame by this court are proper. After going through the pleading Exh.13 para No 8 where in defendant admitted that the defendant No 2 on behalf of defendant No 1 executed the agreement of sale on 10/08/2004, which was not to be acted upon.

7. So far as section 103 of Indian Evidence act is concern it enumerates that burden of proof as to any particular fact lies on that person whose wishes the Court to believe in its existence, unless which is provided by any law that the prove of that fact shall tie on any particular person. In present case in hand, defendant in his written statement contended that when the defendant No.02 approach the plaintiff to agree to give the hand loan to firm of the defendant amount in to Rupees 1,50,000. At the same time the plaintiff has asked the security form the defendants and asked the defendants to execute the agreement of sale from the property of which the defendant is the owner. Then defendant No. 2 on behalf of defendant No. 1 executed agreement of sale on dated 10/08/2004 which was not to be acted upon and also

register it. Therefore, in light of above fact burden needs to be shifted on the defendant to prove said facts.

8. The plaintiff has prayed to delete issue No.1 and recast the same by calling upon the defendant to prove that the agreement to sale was executed allegedly for security purpose and was not to be acted upon. Hence, in light of above discussion and admitted facts burdens needs to be shifted on the defendant to prove alleged fact about the execution of agreement to sale. Hence, I passed following order.

ORDER

- 1] Application below Exh.52 is allowed.
- 2] Issue No. 1 as frame on Exh.16 is deleted and re-cast/re-framed with issue No. 1 as "whether defendants prove that the alleged agreement to sale dated 10/08/2004 was executed by defendants in favour of plaintiff for security purpose and was not to be acted upon?"
- 3] Costs in cause, parties to take note.

Date:- 16.12.2025

(R.S. Mankar)
2nd Jt. C.J.J.D,
Umred.