

ORDER BELOW EXH. 74 IN SPL.C.S. NO. 7/2018

(Krushnath Patil Vs. Rounak Patil)

[CNR No. MHSN05000008-2018]

1. By way of present application the defendant prayed to frame additional issue.

2. It is submitted that, while framing issues at Exh. 48, no issue was framed in respect of the legal defence taken by the defendant and therefore an issue is required on the pleading based. It is further submitted that, the defendant by way of his Written Statement challenges the right of plaintiff to file and contest the suit. Therefore, issue regarding locus standi is required to be framed. With this submission he prayed to allow the application.

3. Plaintiff filed his Say and submitted that the application is belatedly filed. Moreover proposed issue is not required to decide the fact-in-issue at finality. The application is silent and had not assigned any reason to frame the proposed issue. With this submission prayed to reject the application.

4. Heard both sides. Perused record.

5. The plaintiff has come with specific case that alleged sale transaction of suit property was executed and registered impersonating Seetabai Kulkarni. Thus, he filed complaint before

concerned police station and accordingly charge-sheet came to be filed. But the defendant took undue advantage of fraudulent sale deed and obstructed his possession. On this count he filed the suit and challenged the sale transaction, thereby sought relief of declaration against said sale deed along with permanent injunction to protect his possession.

6. In view of the pleading available, issues were framed by my predecessor. The matter was posted for evidence. Thereafter present application came to be filed.

7. Before entering into discussion on merits, it would be proper to mention here that there is no bar laid in Code of Civil Procedure for filing of application for alteration or to frame additional issue. Therefore, this application is well maintainable at this juncture.

8. The provision under Order 14 of Code of Civil Procedure envisage that issues are based on pleadings. Order 6 of Code of Civil Procedure envisage that pleadings includes plaint and Written Statement. Therefore, the issues needs to be framed on assertions not only in plaint but also in Written Statement, as the defence taken by the defendant and its effect relief sought by the plaintiff.

9. It is pertinent to note here that provisions of Indian Evidence Act under Sections 101 to 103 needs to be taken into consideration while framing issues. It is settled that, whoever desires that Court could believe on existence of facts pleaded by him and pass judgment in his favour, he has to prove existence of those facts. Thus, in view of above legal provision and relief sought by the plaintiff along with the defence of the defendant, the present application needs to be taken into consideration.

10. Usually issues are framed on the facts positively asserted and which help to decide the fact-in-issue at finality. More particularly the framed issues are of seminal importance, as it help the parties to know the nature of evidence and facts required to be proved. Therefore, the issues are framed in the light of positive assertions in consonance of relief claimed, as well as, the defence which challenges the maintainability of suit itself.

11. The above discussion makes clear that the issues are required to be framed on Written Statement filed by defendant whenever the facts pleaded by him which challenges the maintainability of suit. In the present suit plaintiff challenges the locus standi of defendant to seek declaration against the sale deed No. 1360 of 2012. Therefore, this defence goes to the root of the case and hence proposed issue is required to be framed.

Hence, following order.

ORDER

- (1) Application is allowed.
- (2) Additional issue is framed as follows :

“(9) Whether plaintiff has locus standi to file the suit and pursue the reliefs ?”
- (3) Accordingly Issue No. 9 is re-numbered as Issue No. 10.
- (4) Parties to adduce evidence, if any.

Islampur
Date : 14/12/2023

(M.M. Chitale)
Joint Civil Judge Senior Division,
Islampur