

MHST160005082018



R.C.S. No. 45/2018
(Krushna Dhiwar & ors. Vs. Lalita Chavan)

Order below Exh.99
(Passed on 21st November, 2024)

This is an application filed by the defendant for framing of additional issue. She submitted that the present suit has been filed for declaration, possession and perpetual injunction. The prayer of declaration is in respect of the validity of sale-deed in favour of the defendant executed by the plaintiff and father of plaintiffs. The plaintiffs in plaint paragraph No.4 has specifically pleaded that said transaction was effected because of undue influence and he came to know about it from the villagers. She also submitted that as the husband of defendant is a high rank officer in the ministry, undue influence was used. Therefore, the following issue is required to be framed:

“Do the plaintiffs prove that sale-deed of suit properties executed by late Waghu on dtd.14.06.1982 in favour of the defendant under coercion, fraud, undue influence exercised by Smt. Lalita U. Chavan defendant or her agent or husband” ?

2. Said application has been resisted by the plaintiffs by filing their say at Exh.100. They submitted that the proposed issue is in respect of hear-say information of the plaintiffs. Said pleading is not only in respect of the present transaction, but it is concerned with several transactions entered upon by the father of plaintiff. The

plaintiffs have not pleaded about the undue influence by the agent or husband of the defendant. Therefore, the prayer regarding that aspect is not maintainable. For all these reasons, the plaintiffs prayed to reject the application with compensatory cost.

3. Perused the application and say alongwith the entire record. Heard both the sides, at length. It is a matter of record that this Court has framed issues at Exh.44. Thereafter, the parties have adduced their evidence and the mater was then fixed for final argument. It is also pertinent to mention that the parties have adduced some of their final argument. The defendant during argument raised an objection regarding framing of the proposed issue, as the plaintiffs have pleaded specifically in respect of the sale transaction dtd.14.06.1982. The perusal of issues shows that issue No.2 is casting burden upon the plaintiffs to prove the non-binding effect of said sale transaction on them. As discussed earlier, both the parties have adduced their evidence on it. Now, by the proposed issue, the defendant wants to get added another issue regarding coercion, fraud or undue influence. The perusal of plaint paragraph No.4 shows that the plaintiffs came to know about the fact that the defendant got executed said sale-deeds by fraud, undue influence and coercion by taking disadvantage of her employment in the ministry. The perusal of written statement at Exh.25 shows that she has denied said contention. On the contrary, she submitted that the father of plaintiff namely Dadu@Waghu executed the sale-deeds in her favour by his consent and by adopting all the legal procedures.

4. It is settled that the fact which is pleaded in the plaint and denied by the defendant in written statement forms a part of the issue. Therefore, in my opinion considering the case of the

plaintiff and the defence taken by the defendants, proposed issue is required to be framed in the interest of justice. The proposed issue is necessary for the determination of the real controversy between the parties. However, as the plaintiffs have not pleaded anything regarding undue influence, coercion or fraud at the hands of the agent of the defendant or her husband, the proposed issue will not include said facts.

5. In view of the above discussion, the application deserves to be partly allowed. Hence, the order:

ORDER

1. The application (Exh.99) is hereby partly allowed.
2. The issue as follows be framed at Exh.44:
 - 2A. Do the plaintiffs prove that the sale-deed of suit properties dtd.14.06.1982 got executed by the defendant by playing fraud, coercion or undue influence ?
3. Cost in main cause.

[Dictated and pronounced in open Court.]

Date:- 21/11/2024

(R. M. Bhende)
Jt. Civil Judge, Jr. Dn., Wai