

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6941 OF 2017

Bhagwat Vithoba Sarade	Petitioner
	.. (Orig. Appellant)
Versus	
Ramanlal Babulal Surana and Ors.	.. Respondents

WITH
WRIT PETITION NO. 6428 OF 2024
WITH
INTERIM APPLICATION NO. 8288 OF 2024
IN
WRIT PETITION NO. 6428 OF 2024

Bhagwat Vithoba Sarade	Petitioner
	.. (Orig. Appellant)
Versus	
Datta Namdeo Sarade and Ors.	.. Respondents

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- Mr. Nitesh S. Nevshe, Advocate appointed through the Legal Aid Committee for Petitioner through VC a/w. Mr. Vishal N. Nevshe in WP/6941/2017
 - Ms. Carina Xavier a/w. Rahil Hanfi, Advocate for Petitioner in WP/6428/2024
 - Ms. Priyanka B. Chavan, AGP for the State in both Writ Petitions
 - Mr. V.S. Mhaispurkar, Advocate for Respondent Nos.10 to 12 in WP/6428/2024

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 10, 2024.

P.C.:

1. Heard Mr. Nevshe, learned Advocate appointed through Legal Aid for Petitioner in WP/6941/2017 through VC; Ms. Xavier, learned Advocate for Petitioner appointed through Legal Aid for

Petitioner in WP/6428/2024 ; Ms. Chavan, learned AGP for the State in both Writ Petitions and Mr. Mhaispurkar, learned Advocate for Respondent Nos.10 to 12 in WP/6428/2024.

2. Petitioner – Mr. Bhagwat Vithoba Sarade is also present on VC and is sitting next to Mr. Nevshe, his Advocate. Following orders are passed in the presence of Petitioner after hearing the Advocates.

3. This is a group of twin Writ Petitions filed by the same Writ Petitioner. Since they relate to two different suit proceedings, separate orders are passed delineating the facts of each Writ Petition separately.

WRIT PETITION NO. 6941 OF 2017

4. This Writ Petition impugns an interlocutory order passed below Exhibit “5” by the District Court in Regular Civil Appeal (for short “**RCA**”) No.480 of 2012. Writ Petitioner before me is the Appellant before the District Court in RCA No.480 of 2012. He was one of the Defendants before the District Court. Plaintiff filed a Suit for perpetual injunction against several Defendants, one out of whom is the Writ Petitioner before me. The said Suit was contested by the parties. Learned Trial Court by judgment dated 20.11.2012 decreed the Suit in favour of Plaintiff granting relief of perpetual injunction against Defendant Nos.1 to 5 on the basis of Plaintiff's title and exclusive possession.

5. Being aggrieved, Writ Petitioner who was one of the Defendants, filed RCA No.480 of 2012. Interlocutory Application filed below Exhibit “5” in RCA is rejected by the District Court on the ground that there is an affirmative finding with respect to possession of the original Plaintiffs and therefore, the Suit was decreed against Defendants. Impugned order of rejection dated 05.05.2014 is passed after hearing both sides. While passing the order, learned District Court referred to the material on record and opined that the said material showed that the original Plaintiff is in possession of the Suit property and therefore perpetual injunction was granted by the Trial Court.

6. The only ground agitated by Appellant in his Exhibit “5” Application is that he is having hope to succeed in the Appeal and therefore he sought stay on the judgment and decree passed by the Trial Court. Learned District Court has held that mere filing of the Appeal is not sufficient to seek an order of stay. The Ex. 5 Application is rejected by the impugned order dated 05.05.2014 and hearing of the Appeal is expedited by the said order. I am informed by Mr. Mhaispurkar, learned Advocate appearing for Respondent Nos.10 to 12 in the said Appeal that the District Court is now seized with the hearing of the Appeal and the next date is in October 2024. More than 10 years have already lapsed pursuant to the passing of the order dated 05.05.2014. The situation is no different today. That apart, even

on merits, there is nothing in favour of the Appellant, who is the Petitioner before me. The Petition is filed in the year 2017.

7. Mr. Nevshe, learned Advocate appointed through Legal Aid to espouse the cause of Petitioner in this Writ Petition today has appeared before me through VC along with the Petitioner next to him. He has drawn my attention to the grounds stated in the Writ Petition. I have perused the same. None of the grounds, *prima facie*, appear to be cogent because the said grounds do not address the issue pertaining to rejection of stay in the order dated 05.05.2014. On the basis of record it is seen that present Writ Petition No.6941 of 2017 is filed on 31.03.2017 by the Petitioner after almost three years after the passing of the impugned order dated 05.05.2014. Petitioner has himself approached and has taken the liberty to come to this Court as per his own convenience. Delay on the part of the Petitioner is writ large on the face of record.

8. At this stage, after more than 10 years, this Court is not inclined to interfere with the impugned order as I find no reason whatsoever to interfere with the same. There is no changed circumstances required to be considered. The order below Exh. "5" is sustained. The Writ Petitioner before me who is the Appellant before the District Court is *prima facie* seen to be an elderly person. Even otherwise he has sought Legal Aid and the Advocate representing him

and his cause of action has been appointed through the Legal Aid Services Committee.

9. In view of the above observations and findings, the only probable order that can be passed in this scenario is to direct the learned District Court to decide the RCA No. 480 of 2012 as expeditiously as possible and in a time bound manner. In that view of the matter, learned Adhoc District Judge-2, Solapur or any other District Judge / Court seized with the hearing of RCA No.480 of 2012 is directed by this Court to dispose of the said RCA within a period of four months from today strictly in accordance with law.

10. Considering that one of the ground stated by the Writ Petitioner who is Appellant before the District Court is that he has agitated his cause of action for the past 34 years, the aforesaid order is therefore suited to the purpose for determining the present Writ Petition. In that view of the matter, the concerned learned District Court shall hear the RCA as directed by this Court and the District Court shall not grant any adjournment whatsoever to any party and it shall be granted only if it is utmost necessary in the case of any emergency / exigency and it shall be entirely at the discretion of the learned District Court if so required. The District Court is directed to ensure that the hearing of the RCA No.480 of 2012 shall be conducted if so required on a day to day basis for disposal within the

aforementioned time frame and it shall be decided strictly in accordance with law after hearing both sides as per the wish of the Petitioner for early determination.

11. All contentions of the parties in the RCA are expressly kept open without delineating any opinion on the merits of the matter.

12. With the above directions, Writ Petition No.6941 of 2017 is disposed.

WRIT PETITION NO. 6428 OF 2024

13. In the present Writ Petition, challenge is maintained to the twin orders dated 12.12.2019 appended at page No.26 of the Writ Petition and order dated 05.10.2021 appended at page No.66A of the Writ Petition. Petitioner before me is the Plaintiff in the Trial Court. He has filed Suit seeking partition, possession and injunction in respect of the Suit properties. Suit was originally nomenclatured as Regular Civil Suit No.222 of 2003. Learned Advocates across the bar inform the Court that the said Suit was renumbered as Regular Civil Suit No.11 of 2009 and thereafter presently i.e. today the Regular Civil Suit is now renumbered as RCS No.2 of 2023. Sadly the said Suit is pending even after two decades. Be that as it may, twin orders under challenge in the present Writ Petition are dated 12.12.2019 and 05.10.2021 which are appended to the present Writ Petition. I have perused the above orders. According to me, there is a third order dated 23.08.2019

ought to have been challenged, but be that as it may, I am giving the benefit of doubt to the Writ Petitioner and dealing with all three orders one by one so that there is no ambiguity.

14. As observed, Writ Petitioner before me is the Plaintiff before the Trial Court and even after almost 21 years after filing his Suit proceeding, one of the charge levelled against the Writ Petitioner by the learned Trial Court is that it is the Plaintiff who is protracting hearing of the Suit proceedings and delaying the adjudication of the Suit proceedings.

15. First order dated 12.12.2019 is passed by the Trial Court which states that since last many dates Plaintiff has failed to bring any order of Appellate Court regarding any stay to the Suit and therefore the evidence of the Plaintiff is closed. At the outset, Plaintiff is aggrieved because of the order of closure of his evidence. The same order records that the matter be kept for evidence of Defendants. Thereafter, matter has been finally argued by both the sides including the Advocate for Plaintiff before the Trial Court. Learned Advocates across the bar have drawn my attention to the Roznama dated 29.07.2024 of the Trial Court which reveals that Plaintiff was present when Advocates for both sides presented their final arguments and the matter was kept for judgment on 02.08.2024. Thereafter it appears that Plaintiff has got into active mode which is seen from the letter

dated 27.08.2024 referred to in the previous order and the steps he has taken to approach this Court for hearing of the Writ Petitions. It is seen that the present Writ Petition though is numbered in the year 2024, was actually filed by the Petitioner in the year 2022 and precisely on 12.01.2022. Plaintiff has once again taken his own sweet time in prosecuting the Petition.

16. The aforesaid timeline clearly shows that Plaintiff has awaited all along until the matter before the Trial Court was fixed for passing of judgment and only thereafter bothered to move this Court.

17. Before I deal with the impugned orders dated 12.12.2019 and 05.10.2021, I shall refer to the third order dated 23.08.2019 passed by the Trial Court. Despite the Petition having been filed on 12.01.2022, Plaintiff has chosen not to challenge the order dated 23.08.2019. He has not chosen to challenge the order because this order virtually exposes the conduct of the Plaintiff before the Trial Court.

18. Coming back to the order under challenge i.e. order dated 05.10.2021, it is seen that the said order which is handwritten order on page No.66A of the Petition and passed by the learned Trial Court in Application below Exhibit “164”. This is an Application filed by Plaintiff before the Trial Court seeking issuance of witness summons to the Sub-Registrar, Karmala, District Solapur and the Talathi,

Chikhalthana, Taluka Karmala, District Solapur to direct them to come to the Court alongwith all papers dealt with by them during the period 20.12.1927 to 24.02.2018 and be ready to depose on the same. Application seeking issuance of summons to the said Government Officers has been rejected by the learned Trial Court by order dated 05.10.2021 for the reason that the evidence of Plaintiff has been closed on 12.12.2019 and Plaintiff has thereafter derelicted in not conducting the cross-examination of Defendants' witness on all the dates fixed for the cross-examination by the Court and on all those dates the Defendants who are also senior citizens just like the Plaintiff remained present for cross-examination.

19. Learned Trial Court has therefore held that the Application is not tenable and maintainable and is filed merely with the intention to delay the trial and it has rejected the Application. Plaintiff does not stop here. He files a fresh Application below Exhibit "167" thereafter. This Application is filed on the eve of final arguments being heard by the Court as noted in the order of the Trial Court. Copy of the Application below Exhibit "167" is at Exhibit "I" – page No.90 of the Writ Petition. Application is endorsed to the Law Enforcement Agencies in Mumbai, the Lokayukta, the Chief Minister of the State and several other Statutory Officers including the District Court. The said Application when read reveals that Plaintiff has grievance against Defendants with respect to the Suit property and he has infact pleaded

merits of his case in that Application and it appears that the grievance expressed by him is with respect to a certain incident pursuant to which the Plaintiff was imprisoned and was subsequently released on bail. Such facts are mentioned in his own Application in paragraph No.14 of the said Application at page No.94. The learned Trial Court has duly considered the Application and has passed the order dated 23.11.2021. While passing the order, the Court has observed that considering the conduct of Plaintiff the Court can take action on him, but looking at his age as also both Plaintiff and Defendant being senior citizens as also the Suit having remained pending since 2009, it was needed to be determined. However, before coming this conclusion the learned Trial Court has also expressed its deep anguish on the conduct of Plaintiff. Paragraph Nos.6 and 13 of the said order clearly depict the anguish of the Trial Court. For reference, the said paragraph Nos.6 and 13 are reproduced below verbatim:-

“०६. वरील परिस्थिती पाहता, दिनांक ०४.०६.२०१९ ते आजपर्यंत वेळोवेळी सदर वादीस या न्यायालयाद्वारे संधी देण्यात आलेली आहे. त्यास सदर अर्ज वजा तक्रार करण्यामागचा उद्देश विचारला असता, त्याचे म्हणणे आहे की, त्याला सदर प्रकरणात इतर प्रतिवादी हजर झाल्याशिवाय प्रकरण चालविण्याचे नाही. मात्र इतर प्रतिवादींविरूद्ध दिनांक १०.०२.२००४ रोजी व दिनांक ०९.०३.२००४ रोजी आदेश पारीत करून त्यांचेविरूद्ध प्रकरण तक्रारफा ऐकण्याबाबतचे आदेश झालेले आहे. म्हणून वर नमूद केल्याप्रमाणे इतर प्रतिवादी हे न्यायालयासमक्ष दाव्याची माहिती असूनही हजर राहत नाही. तरी सदर वादीचे म्हणणे आहे की, इतर प्रतिवादी हजर झाल्याशिवाय त्यास प्रकरण चालविण्याचे नाही, या म्हणण्यास अर्थ राहत नाही.

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१३. पुनश्च: एकदा नमूद करणे योग्य होईल की, सदर वादीविरूद्ध

कोणताही आदेश निम्न स्वाक्षरीद्वारे द्वेष भावनेने केला गेलेला नाही. सदर प्रकरणात हजर प्रतिवादी क्र. ११ हे सुध्दा ज्येष्ठ नागरीक आहेत, त्याचा उल्लेख निशाणी क्र. १६४ च्या आदेशामध्ये केला गेलेला आहे. तरी वादी व प्रतिवादी दोघेही ज्येष्ठ नागरीक असल्याने सदर प्रकरण लवकरात लवकर निकाल करणे अपेक्षित आहे. तरी परंतु बारा वर्षांपेक्षा जास्त कालावधीपासून सदर प्रकरण प्रलंबीत आहे. वरील सर्व तथ्यांप्रमाणे वादी हा एकमेव जबाबदार दिसतो. तरी निम्न स्वाक्षरीकार यांच्यावर सदर तक्रार वजा अर्जाचा कोणताही दबाव न घेता, काम करणे अपेक्षित आहे. तरी वर नमूद केल्याप्रमाणे प्रकरण अंतिमतः तहकूब करण्यात येते, याची वादीने नोंद घ्यावी. सदर वादी व प्रतिवादी क्र. ११ यांना या आदेशाविरुद्ध पुढे वरीष्ठ न्यायालयात आव्हान देण्याची मुभा आहे, याची दोघांनाही कल्पना देण्यात आली आहे."

20. While dealing with the facts of the present case and arriving at the conclusion in the aforesaid paragraphs, the Trial Court has considered each and every Application filed by Plaintiff beginning with the Application filed below Exhibit "126" on 04.06.2019 for the first time and thereafter it is seen that the Plaintiff has repeatedly approached the Trial Court for some reason or the other. In paragraph Nos.1 and 2 of the impugned order dated 23.11.2021, learned Trial Court has delineated all Applications in seriatum alongwith the purpose for which they were filed. Save and except two of the said Exhibits as stated therein, all the rest of the Exhibits are devoted to the Plaintiff only. In paragraph No.6, the learned Trial Court concludes that from 04.06.2019 until 23.11.2021 Plaintiff was given several chances repeatedly by the Trial Court. The Trial Court has noted that the Plaintiff was also asked the reason for not proceeding with the trial but the answer given by the Plaintiff to the Trial Court was that unless and until all Defendants presented themselves physically before the Trial Court, the Suit should not proceed any further. To this, the

learned Trial Court informed the Plaintiff that in respect of those Defendants who did not present themselves before the Trial Court pursuant to the order and summons issued by the Trial Court, the Trial Court has issued order to proceed with the Suit proceedings *ex-parte* against them. Despite informing the Plaintiff about the aforesaid order, Plaintiff has insisted before the Trial Court that unless and until all Defendants present themselves, the Suit should not proceed. Ultimately, the learned Trial Court is found to be helpless against the Plaintiff and it has noted that there is no reason or meaning for the Plaintiff to contend that the Suit should not proceed unless and until all Defendants present themselves before the Trial Court as the said demand is unreasonable.

21. In paragraph No.13, the learned Trial Court has held that the Defendants are senior citizens just like the Plaintiff and therefore the Suit was required to be proceeded with. Learned Trial Court has come to the definite conclusion that it is the Plaintiff and only the Plaintiff himself who is responsible for the delay for trial and it has noted that despite the manner in which the Plaintiff has conducted himself, the Trial Court has not taken any action against him and it is only doing the work what is expected of the learned Trial Court and nothing more.

22. On 23.11.2021, as informed by the Trial Court that Plaintiff was granted a last opportunity to approach the Higher Court / Forum

and obtain any order from the Higher Court / Forum, if he so desired.

23. Plaintiff has purposely and deliberately chosen not to challenge the order dated 23.11.2021. This order clearly records the ultimatum given to the Plaintiff by the Trial Court after delineating the conduct of the Plaintiff on and from 04.06.2021 onwards. Plaintiff has merely challenged the order dated 12.12.2019 regarding his closure of evidence and subsequent order dated 05.10.2021 regarding issuance of witness summons to the Government Officers.

24. As delineated and observed herein above, the second order dated 05.10.2021 in my opinion is a correct order. Learned Trial Court rightly rejected the Application of Plaintiff seeking issuance of witness summons to the Government Officers. In the first place, Plaintiff seeks the Collector to carry records pertaining to 90 years from 1917 to 2021 without delineating any specific records and make them available. Such a request on the face of record is itself innocuous, vague, insufficient and cannot be countenanced. Talathi is called upon to carry certain records pertaining to the year 2019.

25. Both the aforesaid officers are Government Officers, rather Statutory Officers. They are officers who are delegated with statutory functional and operational duties, rather they being Statutory Officers under the provisions of the Maharashtra Land Revenue Code, 1966 are required to preform statutory functions. This Court in several orders

has consistently held that issuance of witness summons to statutory Government Officers as production witnesses should be avoided as it is not the right course of action. If any litigant or party is required to refer to and rely upon any documentary evidence which may be of a public character and in the public domain the said litigant can always approach the concerned Statutory Officer and obtain a copy of the public document or a certified copy of the same and can produce the same in evidence in accordance with the provisions of the Indian Evidence Act, 1872. Summoning statutory Government Officers who are entrusted with public duties and whose presence is required for the benefit and welfare of the public and who are also entrusted with statutory functions under the Maharashtra Land Revenue Code, 1966 is not the correct course of action. In any event looking at the Application made by the Plaintiff in the present case which is completely vague and not specific at all, there is no reason as to why the Government Officers should be summoned by the Court. The order dated 05.10.2021 is therefore sustained and upheld.

26. In so far as order dated 12.12.2019 is concerned, it is seen that the Plaintiff has consistently maintained a stand before the Trial Court that unless and until all Defendants appear before the Trial Court, he shall not allow the Suit to proceed with. The said stand of the Plaintiff is replicated by the learned Trial Court while passing the order dated 23.11.2021. By virtue of this order, Plaintiff was informed

by the Trial Court to approach the Superior Court and get any order of stay or proceed with the Suit proceedings.

27. In view of the delineation of the conduct of the Plaintiff in the order dated 23.11.2021, there is no reason for me to interfere with the impugned order dated 12.12.2019. If the Plaintiff chooses not to proceed with the matter even after a hiatus of more than 18 years, he cannot protract the proceedings and approach this Court. Ultimately it is a proceeding filed by the Plaintiff himself and the learned Trial Court has rightly observed that it is under tremendous pressure to dispose of old Suits and therefore it is seen that learned Trial Court has repeatedly given several opportunities to Plaintiff which he has derelicted. Therefore the order dated 12.12.2019 is also sustained and upheld.

28. In view of the above observations and findings, Writ Petition No.6428 of 2024 is dismissed.

29. In view of the above dismissal of the Writ Petitions, pending Interim Application No.8288 of 2022 is also dismissed.

30. After the above order is dictated in Court, Mr. Mhaispurkar expresses his concern that the interim order dated 01.08.2024 be recalled since the Writ Petition is dismissed. It is clarified that once the Writ Petition is dismissed, all interlocutory / interim orders passed therein do not survive unless clarified and hence learned Trial Court

is directed to proceed with the pending Suit proceedings in accordance with law.

31. In the present case, Mr. Nevshe and Ms. Xavier, both learned Advocates having been appointed through the Legal Aid Services Committee, High Court, Mumbai to represent the Petitioner have rendered their assistance to the Court, without which the Court would have been handicapped. Their professional fee quantified as per the Rules be paid to them by the High Court Legal Aid Services Committee, Mumbai, within a period of four weeks positively upon a server copy of this order being presented by them to the Committee alongwith their Application.

32. Both Writ Petitions are dismissed.

[MILIND N. JADHAV, J.]

Ajay

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