

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1743 OF 2015

Smt. Parubai W/o Raosaheb Saswade
& others

... Petitioners

VERSUS

The District Collector, Beed
& others

... Respondents

.....
Mr. R.P. Dhase, Advocate for petitioners
Mr. V.G. Shelke, A.G.P. for respondent Nos. 1 to 4
Mr. A.V. Deshpande & Mr. K.H. Surve, Advocates for respondent
Nos. 5 to 8.

.....
CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th FEBRUARY, 2015

PER COURT :

1. The petitioners are the plaintiff in R.C.S. No. 276 of 2013. Application Exhibit 5 has been allowed by the Trial Court and status-quo was directed to be maintained.

2. An application Exhibit 69 was filed by the defendants praying for framing of a preliminary issue as to whether the Court has the jurisdiction to try and entertain the suit in the present form and whether the suit was maintainable in the eyes of law. The petitioners have opposed the said application.

3. By the impugned order dated 13-11-2014, application Exhibit 69 has been allowed and preliminary issues as regards maintainability and jurisdiction of the Court have been framed.

4. The petitioners submits that the entire suit could be decided by taking up all the issues together. In the event the Trial Court comes to a conclusion that the suit is not maintainable or the Court does not have the jurisdiction, necessary orders then can be passed. It is submitted that there is no reason for the Trial Court to frame a preliminary issue and decide such issue without taking up all the remaining issues together.

5. Shri Deshpande and Shri Surve learned Advocates appearing on behalf of respondent Nos. 6 to 8 and the learned A.G.P. on behalf of respondent Nos. 1 to 4 submit that the Trial Court has considered the fact that R.C.S. No. 30 of 1998 was decreed on 01-04-2000. The present suit R.C.S. No. 276 of 2013 has been filed as against the decree dated 01-04-2000. Specific prayer in the present suit is that the decree in R.C.S. No. 30 of 1998 ought not be implemented. It was in this back drop that the defendants raised an objection that the Court may not have the jurisdiction to entertain the said suit and the same may not be maintainable.

6. It is further submitted that in this back drop, the Trial Court was convinced that the issue as regards its jurisdiction and maintainability of the suit be decided first so as to arrive at a conclusion as to whether the suit was maintainable and as to whether the Court had jurisdiction to entertain it. It is, therefore, submitted that in the event, the Trial Court is convinced that it does not have jurisdiction, it may not proceed with the entire trial of the said suit and, therefore, save valuable time of the Court as well as of the parties. It is, therefore, contended that the petition is devoid of merit.

7. Learned Advocate for the petitioner has relied upon the judgment of the Division Bench of this Court in the matter of *Shri Pravin Pandurang Patil Vs. Executive Engineer, Pradhan Mantri Gram Sadak Yojana, reported at 2013 (1) ALL MR 256*. In the said matter, without framing a preliminary issue and without posting the matter for recording evidence on preliminary issue, the Trial Court had proceeded to conclude that the suits were rendered untenable. In this back drop, the Division Bench set aside the judgments and decrees in the said suits and remanded them to the Trial Court for recording of evidence on the preliminary issue of jurisdiction raised by the defendant.

8. In the instant case, such a preliminary issue has been cast and the parties have been allowed to lead evidence to the extent of preliminary issues.

9. The petitioner has further relied upon the judgment of this Court in the case of *Kisanrao s/o Raghvendrarao Kulkarni Vs. Sunil s/o Vyankatrao Kulkarni and others, reported at 2013 (3) Mh. L.J. 526*. In the facts emerging from the said case, this Court came to a conclusion that evidence will have to be led if an issue in relation to the jurisdiction of the Court or maintainability of a suit is taken up. This Court, therefore, concluded that the Trial Court in such a situation can decide the issue as a preliminary issue.

10. In the light of the above, I do not find that the impugned order could be termed as perverse or erroneous. Merely because a second view is possible in a given set of facts, would not mean that the impugned order could be termed as being perverse.

11. As such, this petition being devoid of merit, is dismissed.

(**RAVINDRA V. GHUGE, J.**)