

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC. CIVIL APPLICATION NO.26 OF 2015

- 1) Mrs. Dhanshri W/o Jayantrao Deshpande,
Age: 36 years, Occu. Housewife,
C/o. Jayprakash S/o Jagannath Joshi,
N-4, Umamahesh Apartment,
Dashamenagar,
Infront of Shiv Tempal, Jyoti Nagar,
Aurangabad
- 2) Maithali D/o Jayantrao Deshpande,
Age: 14 years, Occu. Minor,
- 3) Prathamesh S/o Jayantrao Deshpande,
Age: 10 years, Occu. Minor,
R/o. Petitioner No. 2 and 3 as above
under guardian Mother petitioner No.1 ..APPLICANTS

VERSUS

Mr Jayantrao S/o Mdhukarrao Deshpande,
Age: 41 years, Occu. Business and Agril.,
R/o. C/o Malti Madhukar Deshpande,
Sai Sanket Park R-32 Gat No. 106,
Infront of Hiwale Patil Lons,
Beed Bypass Road, Aurangabad
Permanent Address :-
At Nimbola, Taq. Bhokardan, Dist. Jalna ..RESPONDENT

Mr G. K. Thigle, Advocate holding for Mr S. M. Sangale, Advocate for
applicants;
Mr P. P. Khandagale Patil, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 7th July, 2015

ORAL ORDER :

By the present application, the applicants seek transfer of the proceedings of Regular Civil Suit No.136 of 2014 from the Court of Civil Judge Junior Division, Bhokardan, District Jalna to the Court of Civil Judge Junior Division, Aurangabad.

2. Applicant no.1 is wife of respondent and applicants no.2 and 3 are his daughter and son, respectively.

3. The transfer is sought on the ground that there are other matrimonial proceedings arising out of Prevention of Domestic Violence Act, pending in the Court at Aurangabad. It is urged by the learned Counsel appearing on behalf of the applicants that earlier, on similar lines, the proceedings which were initiated, were transferred by consent, at Aurangabad and the dispute was reconciled for a while.

4. Learned Counsel appearing on behalf of the applicant has placed reliance upon the order dated 3rd April, 2014, passed by this Court in Misc. Civil Application No.91 of 2013. The said application was initiated at the behest of the present applicants.

5. The prayer for transfer of proceedings is objected by the learned Counsel appearing on behalf of the respondent – husband, on the ground that the property involved in the suit, of which partition is sought, is an

ancestral property and mother and sister of the respondent are having share in it. Apart from above, he would urge that since the proceedings are initiated by the applicants at Bhokardan, the same cannot be transferred to Aurangabad as per their sweet will. He would further urge that the son of the respondent is residing with him and he is required to take his care and thus, it would be difficult for him to travel from Bhokardan to Aurangabad. Consequently, he sought dismissal of the application.

6. Having analyzed the submissions made by the respective Counsel, it is required to be noted that the cause for filing of the suit in question appears to be indifference between applicant no.1 and the respondent, which has resulted into separation.

7. The suit is instituted based on the ground of separation, to which a minor daughter is also a party plaintiff.

8. The initiation of the proceedings by the applicants at Bhokardan was not out of her choice, but out of compulsion, as the suit is required to be initiated at a place where the property is located.

9. Just because the suit instituted by the applicants does not have a direct colour of matrimonial proceedings, in my opinion, that cannot be a

ground for refusing the transfer of proceedings from Bhokardan to Aurangabad. Considering the distance and hardship of applicants, it will be appropriate to grant the request. I am fortified in my view by the decision of the Apex Court, in the matter of **Reena Mehra vs. Rohit Rai Mehra & anr.**, reported in **(2003) 2 SCC 291**.

10. In view of above, in my opinion, the present application succeeds and stands allowed. It is ordered that the proceedings of Regular Civil Suit No.136 of 2014, pending on the file of Civil Judge Junior Division, Bhokardan, District Jalna, shall stand transferred to the Court of Civil Judge Junior Division, Aurangabad.

11. In the circumstances, there shall be no order as to costs.

12. Since the matter is allotted by the Legal Aid Committee, the fees payable to Advocate Mr P.P. Khandagale Patil, is quantified at Rs.5,000/-.

(N.W. SAMBRE, J.)

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