

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC. CIVIL APPLICATION NO.37 OF 2015

Madanlal s/o Anandram Zanwar,
Age: 75 years, Occ. Agri.,
Through GPA holder
Ashwin s/o Madanlal Zanwar,
Age: 43 years, Occ. Business,
R/o First Floor, Zanwar Tower,
Sarafa Road, near Mohan Talkies,
Aurangabad

..APPLICANT

VERSUS

- 1) The State of Maharashtra
- 2) The Collector,
(Revenue) Ahmednagar,
Office of Collector,
Dist. Ahmednagar
- 3) Rahul s/o Shriram Zanwar,
Age: 50 years, Occ. Business,
R/o IInd Floor, Zanwar Tower,
Sarafa Road, near Mohan Talkies,
Aurangabad
- 4) Subhash s/o Kesarmal Barlota,
Age: 62 years, Occ. Advocate,
R/o 28, New Shantiniketan Colony,
Aurangabad

..RESPONDENTS

Mr S. P. Tilve, Advocate for applicant;
Mr A. P. Bhandari, Advocate for respondent No. 3

CORAM : N.W. SAMBRE, J.

DATE : 7th July, 2015

ORAL ORDER :

This application is by the plaintiff to Special Civil Suit No.25 of 2014, instituted by him in the Court of Civil Judge Senior Division, Aurangabad, wherein declaration for cancellation of the sale deeds executed by the respondents/defendants is sought for. The said suit, in the submission of the applicant, is fixed for framing of the issues.

2. Learned Counsel appearing on behalf of the applicant submits that the suit is filed by the applicant through his general power of attorney, namely, Ashwin, who is son of the present applicant and of 41 years age. The applicant, claiming to be of 75 years age, has approached this Court seeking transfer, on the ground that his ill health is not permitting him to attend the proceedings at Kopargaon. He has also raised issue as regards pendency of the proceedings, i.e. L.A.R. No.422 of 2005 and Regular Civil Suit No.1084 of 2014 against the present respondents at Aurangabad. He would urge that as the applicant and respondents are residing at Aurangabad and the witnesses to the suit are also residing at Aurangabad, it will be in the interest of justice to order transfer of the proceedings of Special Civil Suit No.25 of 2014, pending on the file of Civil Judge Senior Division, Kopargaon to the Court at Aurangabad. In support of his contention, the applicant has placed reliance on section 17 of the Code of Civil Procedure.

3. Mr Bhandari, learned Counsel appearing on behalf of respondent no.3, relying upon the proviso to section 16 read with section 22 of the Code of Civil Procedure, would urge that once the applicant having chosen to initiate the proceedings at Kopargaon, particularly having regard to the location of the suit property, it will be inappropriate to order transfer of such proceedings, at the whims and fancies of the applicant, to the Court at Aurangabad. In addition to above, he would urge that the suit at Kopargaon is pursued by the son of the applicant, namely, Ashwin, who is his general power of attorney and recourse can be taken to Order XXVI of the Code of Civil Procedure for examining the applicant on commission, if he so desires. He would urge that in the suit pending at Kopargaon, the pleadings are complete and could be decided at the earliest and thus, sought dismissal of the present application.

4. Having considered rival contentions of the parties and upon analyzing the submissions, it is required to be noted that the subject-matter of the suit of which transfer is sought from Kopargaon to Aurangabad, is altogether different than the one which is involved in a suit pending at Aurangabad including that of land acquisition proceedings. Apart from above, it is required to be noted that the suit at Kopargaon was instituted in April, 2014, the parties have already completed pleadings thereto and the it is fixed for framing of the issues. The said suit is instituted by the applicant through his general power of attorney, who is pursuing the same.

5. In the above referred background and particularly having regard to the proviso to section 16 of the Code of Civil Procedure, it will be inappropriate to order transfer of the proceedings from Kopargaon to Aurangabad, just because it is inconvenient to the present applicant.

6. The initiation of the proceedings or transfer of the proceedings at the sweet will and choice of the applicant and transfer of such proceedings as per the convenience of the parties in the background of above referred facts, in my opinion, is not required to be adhered to.

7. In the light of above, the present application which is devoid of merit, stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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