

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

901. CRA/66/2011
PRADIP SHANKAR RANE V/S RAJENDRA NAMDEO PATIL AND ORS

902. CRA/67/2011
PRADIP SHANKAR RANE V/S ANIL KAHINATH PATIL AND ORS

Mr. A.N. Sabnis h/f. Mr. Mukul S. Kulkarni, Advocate for applicant.
Mr. A.M. Gholap, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2015.

ORDER :

1. The first proceeding is filed to challenge the order made by the learned Civil Judge, Junior Division, Bhusawal below Exhs. 1 and 28 of Regular Civil Suit No. 68/2009 and the second proceeding is filed to challenge the order made by the same learned Judge on Exh. 1 and 30 of Regular Civil Suit No. 72/2009. Both the sides are heard.

2. The aforesaid two suits are filed by present respondents for relief of injunction and declaration. It is the case of plaintiffs that they have purchased some portion of land Gat No. 250/1, admeasuring 1 Hectore 1 R., from its owner and under registered sale deed along with the right to take water from the well situated in this land and the right to take water is

proportionate to the portion purchased by the plaintiffs. It is contended that after the execution of sale deed in their favour, the owner executed a sale deed only in respect of the well situated in this land in favour of defendant No. 1. It is contended that on the basis of this sale deed, defendant No. 1 is obstructing the plaintiffs from taking water of the well and so, the cause of action took place for the suit. They contended that the sale deed made in favour of defendant No. 1 is not binding on them and so, such declaration needs to be given.

3. Defendant No. 1 filed written statement and then he filed applications for framing preliminary issue regarding maintainability of the suit in Civil Court under Section 9A of Civil Procedure Code as amended in Maharashtra. In the application, the defendant contended that such relief cannot be given by the Civil Court. He contended that the valuation of the subject matter is not done correctly and it was necessary for the plaintiffs to pay court fee on the value of the well shown in the sale deed executed in favour of defendant.

4. The preliminary issue was framed by the Trial Court regarding the jurisdiction of the Court. The Civil Court has decided both the points. It is observed that in view of the

provisions of Bombay Court Fees Act, proper court fee is paid. It is also observed that the main relief is the relief of injunction and the right to take water was already sold in favour of plaintiffs and so, the declaration is to the effect that the sale deed made in favour of defendant No. 1 is not binding on the plaintiffs. This finding is correct and no interference is possible.

5. The learned counsel for the petitioner took this Court through some provisions of Mamlatdars' Courts Act, 1906 (hereinafter referred to as 'the Act' for short) and particularly section 5 of the Act. The learned counsel also took this Court through the provision of section 27 of the Act. These provisions are with regard to the jurisdiction of the Mamlatdar only and there is nothing in the Act creating bar to the jurisdiction of the Civil Court. In any case, the right to take water was purchased under the sale deed and to that extent, the plaintiffs were entitled to claim relief of injunction. Civil Court has power to grant such relief. The transaction made in favour of defendant No. 1 is subsequent and this circumstance cannot be ignored. It is clear that only to protract the decision of the suits, such tactics are played by the defendants. There are no merits in the revisions.

6. So, the revisions are dismissed. The Trial Court is to expedite the matters and in any case, dispose of the matters within six months from the date of receipt of this order.

[T.V. NALAWADE, J.]

ssc/