

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3946 OF 2014

Laxman Bhujangrao Gaikwad & ors.

..PETITIONERS

VERSUS

Sharda Bhagwan Gaikwad

..RESPONDENT

Mr N.K. Kakade, Advocate for petitioners;
Mr N.T. Tribhuvan, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2015

ORAL ORDER :

By this petition, the petitioners/original defendants seek to challenge the order dated 14th March, 2014, passed by Civil Judge Junior Division, Paithan, below Exh.19, in Regular Civil Suit No.111 of 2011.

2. In the aforesaid suit for partition and separate possession, the petitioners/defendants moved application Exh.19 praying that the suit be dismissed as the same is hit by the principle of estoppel enshrined in section 115 of the Evidence Act. It is claimed by the petitioners that on an earlier occasion, for the same relief and in relation to the same property, Regular Civil Suit No.151 of 1998 had been filed, which came to be compromised between the parties, i.e. present petitioners and respondent and respondent/plaintiff got her entire share. According to him, once

there is an admission as regards passing of compromise decree in Regular Civil Suit No.151 of 1998, the respondent/plaintiff is estopped from instituting the second suit.

4. Learned Counsel appearing on behalf of the petitioners has placed reliance on the judgment of the Apex Court in the matter of **Pulavarthi Venkata, Subba Rao & ors. vs. Valluri Jagannadha Rao (deceased) by his heirs & L.Rs. & ors.**, reported in **AIR 1967 SC 591**, so as to canvass that once the compromise decree is admitted, the parties to the said compromise decree are estopped from taking out a separate suit in relation to the same cause of action and same properties. He has also placed reliance on the judgment of this Court in the matter of **Yamunabai Purushottam Deogirakar & ors. vs. Mathurabai Nilkanth Choudhari & ors.**, reported in **2009 (4) ALL MR 884**, so as to canvass the same principle. According to him, as the respondent/plaintiff is estopped from filing the suit for the same relief, application Exh.19 ought to have been allowed by the learned Trial Court. He would further urge that, having regard to the observations made by the Trial Court while rejecting the application Exh.19, if the same is tested on the law cited supra, the impugned order is not sustainable.

5. Learned Counsel appearing on behalf of the respondent/plaintiff would urge that the cause for filing the second suit in which application

Exh.19 was moved, was very much pleaded and brought to the notice of the Trial Court. He would further urge that the circumstances which prompted filing of the second suit and the admission to the passing of compromise decree are taken into account by the Court below while passing the impugned order. He submits that the relief of partition and separate possession in the first suit and the second suit is based on the relationship of the parties. He would urge that since the decree passed in earlier suit by way of consent terms was not acted upon, the respondent/plaintiff has every right to institute second suit. He would further urge that the order passed by the Trial Court on 14th March, 2014, is just and proper and does not call for any interference.

6. Having considered the contentions canvassed by the respective parties and on perusal of the findings recorded while rejecting the application Exh.19, seeking dismissal of the suit being hit by the principle of estoppel, the Trial Court appears to have taken note of the fact, which has prompted the plaintiff to file the second suit. The Trial Court was alive to the fact as regards filing of earlier suit, being Regular Civil Suit No.151 of 1998 and the agreement of compromise Exh.13. The Trial Court has taken note of the fact that defendant no.4 has come out with a case that the respondent/plaintiff had relinquished her share in his favour for a consideration of Rs.1,10,000/-. The Trial Court was alive to the fact that after the death of husband of plaintiff in 1997, she started residing with her

in-laws and the defendants were taking care of the plaintiff. However, since last three years, the defendants have started neglecting the plaintiff and the same has prompted her to file the second suit.

7. While rejecting the application Exh.19, the learned Trial Court has taken into account the conduct of defendant no.4 and has also relied upon the case law in the matter of Pulavarthi Venkata, Subba Rao (cited supra), so as to record a finding that compromise decree cannot strictly be regarded as a decision on the matter.

8. In my opinion, the Trial Court has given sufficient reasons for rejecting the application Exh.19.

9. So far as the reliance placed by the learned Counsel for the petitioners/defendants on the decisions in the matter of Pulavarthi Venkata, Subba Rao & ors and Yamunabai Purushottam Deogirikar & ors. (cited supra) is concerned, both the judgments are rendered by the Honourable Apex Court and this Court while exercising appellate jurisdiction. What is sought to be canvassed before this Court is, at an interlocutory stage, the dismissal of the suit is sought for, that too in absence of any oral evidence on record.

10. The conduct of defendant no.4 and the law considered by the Trial Court in the matter of Pulavarthi Venkata, Subba Rao (cited supra) has prompted the learned Trial Court to pass an order rejecting application Exh.19.

11. In the light of what has been stated above, in my opinion, no case for interference is made out. Thus, the writ petition fails and the same stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

amj