

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 220 OF 2014
IN WP/10084/2014

ANNARAO BABURAO RAJMANE AND ANOTHER
VERSUS
GULAB NIVRUTTI ALTE AND OTHERS

WITH

REVIEW APPLICATION (CIVIL) NO. 222 OF 2014
IN WP/10085/2014

NARAYAN SANTRAM SONTAKKE
VERSUS
GULAB NIVRUTTI ALTE AND OTHERS

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Advocate for Applicants : Shri Deshpande Amit S.
Advocate for Respondents 1 to 3 : Shri Gunale V.D.
Advocate for Respondent 4 : Shri Deshpande Gaurav L.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 30, 2015
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PER COURT :-

1. I have heard the strenuous arguments of Shri Deshpande, learned Advocate for the applicants as well as Shri Gunale, learned Advocate for respondents 1 to 3.

2. The contention of the applicants is that the order dated 24.9.2014 impugned in Writ Petition No. 10084 of 2014 does not reveal the correct picture as regards the proceedings in RCS No.160 of 2009. Shri Deshpande, therefore, points out paragraph No.9 of the said order to submit that the

recording of evidence was not over, but was in progress.

3. He, further submits that in paragraph No.6 of the order dated 19.11.2014, in Writ Petition No.10084 of 2014, this Court has observed that the recording of the evidence is concluded. He, therefore, rightly points out that the trial Court had not said so in paragraph No.9 of its order dated 24.9.2014 that the recording of evidence was over. Shri Gunale, learned Advocate fairly submits that the recording of evidence was in progress.

4. As such, to the extent of these submissions of Shri Deshpande, the same are required to be accepted.

5. Though Shri Deshpande submits that unless issues are cast, his applications Exhibits 53 and 56 in RCS No.160 of 2009 and 159 of 2009, respectively, cannot be dealt with, I do not find that the said submissions need to be accepted on the plea that there is an error apparent on the face of the order under review.

6. This Court (Coram: S.P.Deshmukh, J.) has observed in paragraph No.2 of the order dated 14.7.2014, passed in Writ Petition No.3787 of 2014 between these parties, as under:-

“2. Looking at that the suit has reached the stage of evidence and since it is the contention of the plaintiff - respondents that possession has been lost during the course of the suit, I deem it

appropriate that the parties to adduce evidence in respect of suit as well as application Exhibit-53 simultaneously. Such, request of the petitioner appears to be reasonable in the present circumstances. Accordingly, the trial court is directed to hear the parties in the suit as well as on application Exhibit-53 simultaneously. With this the order impugned stands modified accordingly. Application Exhibit-53 be heard along with main suit. Regular Civil Suit No.160 of 2009 be disposed of as expeditiously as possible, preferably within a period of three months from today. Writ petition stands disposed of accordingly.”

7. In the light of the observations of this Court as above, the trial Court was directed to decide Exhibit 53 on its merits, along with RCS No.160 of 2001. In the light of the said order, this Court, while passing the order dated 19.11.2014 has observed in paragraph Nos.7, 8, 9 and 10 as follows:-

“7. I find that, in the orders passed by this Court dated 14.7.2014 in Writ Petition No.3786 and 3787 of 2014, the interests of the petitioners have been taken care of. Applications Exh.53 and 56 which are for restoration of possession and removal of the encroachment are directed to be decided along with the suits.

8. In my view, the grievance of the petitioners that they have lost their possession and which are sought to be recovered (said possession), can be dealt with by the Trial Court in both the suits in view of the observations made by this Court in both the orders dated 14.7.2014 (in paragraph No.2).

9. As such, it is expected that the Trial Court shall decide applications Exh.53 and 56 while deciding RCS Nos. 160/09 and

159/09 respectively. Needless to state, in the event the petitioners are aggrieved by the ultimate result in the suits, law permits them to raise a comprehensive challenge on all counts.

10. As such, both these petitions are disposed of without interfering with the impugned order and especially in the light of the observations made by this Court in paragraph No.2 of the above referred orders dated 14.7.2014.”

8. It is thus apparent that under orders of this Court, dated 14.7.2013 and 19.11.2014, the applicants grievance and contentions set out in applications Exhibits 53 and 56 are to be considered on their merits in RCS No.160 of 2009 and 159 of 2009.

9. Since the observation made by this Court in paragraph Nos.6 of the order under review, that the recording of evidence has concluded, is being reviewed, the applicants as well as the respondents can, therefore, lead evidence even to the extent of Exhibits 53 and 56 as has been observed by this Court, in its order dated 14.7.2014 and 19.11.2014.

10. As such, the Review Application is partly allowed to the extent of the observations of this Court in paragraph No.6 of the order dated 19.11.2014 as above. Rest of the order under Review is maintained.

11. Needless to state, since both these proceedings have been ordered to be decided within a time frame by order dated 14.7.2014 passed by this

Court in Writ Petition No. 3787 of 2014, the trial Court shall decide the said proceedings within the time frame or as may have been extended. Both the parties assure this Court that they shall not seek any adjournment on unreasonable and frivolous grounds and shall cooperate with the trial Court for the expeditious disposal of both these proceedings.

(RAVINDRA V. GHUGE, J.)

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akl/d