

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6438 OF 2015**

1. Shivaji Laxman Pharande and Ors.	Petitioners
Vs	
1 Housabai Laxman Pharande and Ors.	.. Respondents

Mr. S.P.Thorat, Advocate for the petitioners.

Mr. Ravi P. Kadam, Advocate for respondent no.3.

CORAM : R.G.KETKAR,J.
DATE : 30/07/2015

PC:

1. Heard Mr. S.P.Thorat, learned counsel for the petitioners and Mr. Ravi Kadam, learned counsel for respondent no.3 at length.
2. By this Petition under Article 227 of the Constitution of India, original defendants no. 4 and 10 have challenged the Judgment and order dated 30.4.2015 passed by the learned Principal District Judge, Satara below Exhibit-1 in Transfer Application (Civil) No. 71 of 2015. By that order, the learned Principal District Judge (P.D.J.) rejected the transfer application made by the original defendants under section 24 of C.P.C. for transferring the suit to other court.
3. In support of this Petition, Mr. Thorat strenuously contended that as many as 109 Advocates had made representations to the District Judge, Satara as also President of the Satara District Bar

Association on 10.7.2014 setting out therein treatment meted out by the learned presiding officer. Defendants no.4 and 10 filed Transfer Application No.71 of 2015 under section 24 of C.P.C. for transferring proceedings of R.C.S. No.292 of 1989 before Shri S.G.Kore, Civil Judge, Jr. Dn., Medha to some other Court. In paragraph 3 of the Application, it is asserted that the presiding officer directed parties to settle the dispute. As the parties could not settle matter, the presiding officer had prejudiced against the defendants. The presiding officer started imposing costs on the defendants. The presiding officer was also giving dates convenient to plaintiff's Advocate. The learned Judge was, however, not giving dates convenient to their Advocates.

4. Mr. Thorat further submitted that the learned trial Judge instead of deciding the suit on merits, is insisting to settle the dispute between the parties. He further submitted that the grievance made in the transfer application is also substantiated in the representation dated 10.7.2014 made by as many as 109 Advocates. The said representation was annexed to the transfer certificate. The learned Judge has also orally indicated that he is inclined to decide the suit in favour of the plaintiffs. The learned Judge has also insulted defendants' Advocate on many occasions. Even cross examination of the plaintiffs' witness is not properly recorded. He submitted that the defendants will not get justice from the Court and, therefore, it is a fit case to transfer the

matter. He submitted that in paragraph 10 of the impugned order, the learned P.D.J has noted the submissions of the defendants and observed that except the words of the applicants, namely defendants no. 4 and 10, there is no material to show that the presiding officer asked the defendants to settle the matter and as they have not settled the matter, the presiding officer was annoyed. He submitted that the learned P.D.J. has considered the remarks dated 13.4.2015 confidentially submitted by the presiding officer. In the remarks, the presiding officer has stated that the incidents regarding uttering the words from dias quoted in the application are false. Mr. Thorat submitted that the learned trial Judge is bound to give this explanation in response to the letter issued by the learned P.D.J. He submitted that in any case, defendants no. 4 and 10 are willing to withdraw the allegations if the suit is transferred to some other Court.

5. I have considers the submissions advanced by Mr. Thorat. I have also perused the material on record. Perusal of the impugned order shows that after the Transfer Application No.71 of 2015 was filed by defendants no.4 and 10, the learned P.D.J., by letter dated 30.3.2015, forwarded copy of transfer application and called upon presiding officer to submit his report. I have also gone through the report dated 13.4.2015 submitted by the learned presiding officer to the learned P.D.J. The learned trial Judge has stated that the suit is of the year 1989, i.e. more than

25 years. The suit is for partition and separate possession. I have carefully gone through the explanation offered by the learned trial Judge. The learned trial Judge has stated that on few occasions, costs were imposed on the plaintiffs and on few occasions costs were also imposed on the defendants.

6. As far as the impugned order is concerned, the learned P.D.J. has considered this aspect in paragraph 10 of the impugned order. It was observed that even assuming for the sake of arguments that the presiding officer has asked the parties to settle the matter, if he finds there is element of settlement having regard to nature of the relief, i.e. relief of partition, it cannot be said that the presiding officer will have any grudge against any of the parties. Even if the matter is not settled despite giving suggestion to the parties, that cannot be a ground to have a grudge against the parties. The learned P.D.J further observed that it cannot be accepted that the presiding officer has started harassing defendants as they refused to settle the matter as alleged. Learned P.D.J. thereafter proceeded to consider the orders imposing costs on the parties. After considering these orders, the learned P.D.J. also observed that by order dated 16.8.2013 below application Exhibit 385, learned trial Judge has imposed costs on the plaintiff. Again, by order below Exhibit 427 the court has imposed costs of Rs.1000/- on the plaintiffs.

7. The presiding officer therefore observed in paragraph 11 that the court has imposed costs more or less on the plaintiffs as well as defendants while considering their respective applications having regard to circumstances and nature of the applications.

8. The learned P.D.J. thereafter considered the remarks dated 13.4.2015 confidentially submitted by the presiding officer and observed that the apprehension of the defendants that the presiding officer is prejudiced and they will not get justice, is not well founded.

9. Mr. Thorat submitted that along with Transfer Application, even the representation dated 10.7.2014 was enclosed. However, that aspect is not considered by the learned P.D.J. In this regard, I have made requisite inquiries and I find that in pursuance of the representation dated 10.7.2014 the remarks of the learned trial Judge were called. The then P.D.J. perused the complaint and the remarks of the learned trial Judge and after considering the remarks and having held meeting with the learned trial Judge, disposed of the complaint on 10.11.2014. In other words, no action was taken in pursuance of the representation dated 10.7.2014 against the concerned Judge. Considering all this, I do not find any case is made out by the defendants no. 4 and 10 for transferring the case.

10. Mr. Thorat submitted that defendants no. 4 and 10 are willing to withdraw the allegations made against the concerned

Judge if the suit is transferred to some other Court. I do not find any merit in this submission as basically I do not find any merit in the allegations made against the concerned Judge. In the light of this discussion, Subject to this, Petition fails and the same is dismissed.

11. Let R. & P. be sealed and transmitted to the District Court forthwith.

(R.G.KETKAR, J.)