

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5317 OF 2015

Ravindra Devrao Naik

(Since deceased through the legal heirs)

Smt. Geeta Ravindra Naik and others

.. Petitioners

Versus

Shri. Shrikant Devrao Naik

(Since deceased through the legal heirs)

Smt. Veena Shrikant Naik and others

.. Respondents

Mr. A. M. Vernekar a/w Mr. Samarth Pai, for the Petitioners.

Mr. A. A. Kumbhakoni, Senior Advocate a/w Mr. S. S. Redekar i/by Mr. P. M. Patil, for the Respondent Nos.1A to 1C/original Plaintiffs.

Mrs. S. M. Bhoir, for the Respondent No.7.

CORAM : R.M. SAVANT, J.

DATE : 25th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 16.02.2015 passed by the Learned Judge of the City Civil Court, Greater Bombay, by which order the applications Exh.3 and Exh.3A seeking leave to file a suit in respect of the properties mentioned in the said applications came to be allowed and the original Plaintiffs were granted leave to file a suit for laying a claim to the property situated on Gat No.18 of village Alewadi, Taluka Palghar District Thane as well as land

bearing Gat No.177A and 177B of village Nandgaon (Tarapur), Taluka Palghar, District Thane (Now District Palghar). The Learned Counsel for the parties urged contentions against and for leave being granted to the Plaintiffs. However, a perusal of the impugned order dated 16.02.2015 discloses that though various submissions were made and even written arguments were filed before the Trial Court, the reasoning of the Trial Court if one can say so is only found in paragraph 11 of the said order.

The said paragraph 11 reads thus :-

“11] Here in the case in hand, the present suit is pending and during the pendency of the suit, application has been filed seeking leave as prayed for, in the application. There is no hesitation to allow those applications. In view of this, I proceed to pass the following order:-”

2. Hence, a reading of the said paragraph discloses that the said applications have been allowed by an order which is sans any reasons as to why the applications are allowed save and except the fact that the instant suit is pending. It is well settled that the application filed under Order 2, Rule 2(3) has to be considered on the touchstone of the said Rule and the principles governing the same. However, the Trial Court has not even adverted to the position in law and has by merely observing that since the applications are filed pending the suit, allowed the applications. When confronted with the situation, that the impugned order is sans any reasons, the Learned Senior Counsel appearing on behalf of the

Respondents i.e. the original Plaintiffs Mr. A. A. Kumbhakoni fairly made a statement that the impugned order be set aside and the matter be relegated back to the Trial Court for a de-novo consideration of the application. In view of the said statement, the impugned order dated 16.02.2015 is accordingly set aside and the matter is relegated back to the Trial Court for a de-novo consideration of the applications. Since the parties have to appear before the Trial Court on 11.09.2015, the Trial Court would fix a schedule for hearing of the instant applications and thereafter decide the same latest by 31.10.2015.

3. In view of the fact that the leave was granted to the Plaintiffs, the Plaintiffs have filed a second suit being RCS No.77 of 2015 before the Learned Civil Judge, Junior Division, Palghar. The Learned Senior Counsel further makes a statement that in view of the setting aside of the impugned order, the said suit would not be proceeded with until on remand the applications are decided. Statement accepted. Needless to state that the applications would be considered on their own merits and in accordance with law and the setting aside of the impugned order would not be construed as any expression of opinion on merits. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]