

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.84 of 2014
(Smt. Kamlabai w/o. Panjabrao Dhopare and Ors. vs. Gayaprasad w/o.
Durgaprasad Shukla (D) through L.Rs. and Ors.)
with
Civil Revision Application No.85 of 2014
(Smt. Kamlabai w/o. Panjabrao Dhopare and Ors. vs. Gayaprasad w/o.
Durgaprasad Shukla (D) through L.Rs. and Ors.)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.S.Patrikar, Adv. for the applicants.
Mr.M.K.Kulkarni, Adv. for respondent nos. 2 and 3 (als
for respondent nos.1 (a to d) in S.A. No.84 of 2014.

CORAM : A.P.BHANGALE, J.

DATE : 10.9.2015.

Heard.

By Civil Revision Application No.84 of 2014, legality, propriety and correctness of order below Exh.94 passed by the trial Court i.e. Joint Civil Judge (Jr.Dn.), Narkhed on 26.4.2014 in Regular Civil Suit No.31 of 2010 is challenged. While by Civil Revision Application No.85 of 2014, the order passed below Exh.93 in the same suit i.e. Regular Civil Suit No.31 of 2010 whereby the learned trial Court rejected application Exh.93 on the ground that earlier Judgment in Regular Civil Suit No.115 of 1989 does not operate as res judicata is under challenge.

It appears that the revision applicants herein instituted Regular Civil Suit No.31 of 2010 in the Court of Civil Judge (Jr.Dn.), Narkhed and pleadings are completed. The defendants have also filed counter claim while resisting

the suit and in their counter claim, the defendants have raised the issue as to Will deed dt.27.10.1986 by one Jugalkishor Vajpayee. It is also alleged that the then Tahsildar Mr.Jaju got the agricultural land illegally mutated in the name of certain persons by name Naresh, Suresh and Mandakini. It is also claimed that defendant no.1 is entitled to recover possession of the suit property from the plaintiff. The plaintiffs have claimed right over the suit fields for the first time in July, 2010. The trial Court is called upon to decide the relief of declaration sought by the defendants that the property belongs to Radhakrushna Deosthan, Jalalkheda and that the second defendant is entitled to possess the property. The relief of possession is, thus, sought by defendant no.2 in the suit. Earlier, in the suit by temporary injunction, defendants were restrained from interfering with the possession of the plaintiffs over the suit fields. The plaintiffs have sought to rely upon the Judgment and Order in Regular Civil Suit No.115 of 1989 whereby the suit filed by plaintiffs Mandakini and Naresh through their agent Jagdishprasad Govinda Dixit against Gayaprasad Shukla was decreed and said Gayaprasad was restrained from interfering with plaintiff's possession in respect of the property described in the decree.

In the impugned order in Civil Revision Application No.84 of 2014, the learned trial Judge by reasoned order expressed his opinion that nodoubt the Judgment on admission can be pronounced; however, admission should be of entire facts in issue. Here, another fact which is in issue is obstruction at the hands of the defendants. However, the said fact is not in dispute. There

is admission in this context and sole admission does not entitle the plaintiff to the decree on admission. Thus, by observations in para no.18 of the impugned order, learned trial Judge decided to reject the application (Exh.94) moved for judgment on admission by the plaintiffs as, according to the learned trial Judge, the application was an attempt to get away with sole admission. However, interpretation of that admission is necessary and therefore, the plaintiffs are not entitled to Judgment on admission and they should lead evidence on the issue raised.

In Civil Revision Application No.85 of 2014, the application at Exh.93 was rejected as, according to the learned trial Judge, the principle of *res judicata* is for giving finality to judicial decision. But the earlier suit will operate as *res judicata* only when the same issues in the later suit were directly and substantially involved and decided in the former suit. The learned trial Judge expressed the view that whether the Judgment and decree operates as *res judicata* can be answered after going through that Judgment which is at Exh.72. (Judgment in Regular Civil Suit No.115 of 1989 was cited to plead *res judicata*). The learned trial Judge expressed the view that the issue of ownership was not involved in the earlier suit and it will not operate as “*res judicata*”.

Having perused both these orders passed by the trial Court in Regular Civil Suit No.31 of 2010 pending between the parties, it is seen that both these orders are interim in nature and not final. The suit is pending, pleadings are also complete and counter claim is also raised by the defendants. That being so, the parties are required to

go to trial for decision of the controversy in the suit finally and effectively upon evidence on merits.

Learned Counsel for the revision applicant sought to rely upon the ruling in the case of **Satchitanand Damodhar Naik and Ors. vs. Laxman A. Bordekar and Others** reported in 2010 (7) Mh.L.J. 377. This ruling is about the principle of res judicata and its applicability in respect of question of title in the suit property. This Court was deciding Second Appeal No.100 of 2009 at Panji Goa Bench on 22.3.2010 in respect of concurrent findings of facts by the Court below which resulted in dismissal of the Second Appeal. One cannot dispute the legal principle that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly or substantially in issue in a former suit between the same parties in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court.

Another ruling which is cited is in the case of **Uttam Singh Dugal and Co. Ltd. vs. Union Bank of India and Others** reported in AIR 2000 SC 2740. It is about the Judgment on admission. In the said ruling, the Apex Court considers that the Court has jurisdiction to enter a Judgment for the plaintiff when there is clear admission of facts. Thus, in a case where it is impossible to take any other view, admission may entitle the plaintiff to claim Judgment on admission.

Considering the impugned order at the ad-interim stage in the pending suit, both these rulings are not attracted since counter claim is also raised by the defendant

to claim relief of possession from the plaintiff. All the issues raised in the suit are required to be framed and dealt with in the light of the principles of law cited. The plaintiffs in said suit wherein counter claim is raised must not fight shy of inviting decision on merits in the suit which is hotly contested. It is not a simple suit wherein plain admission can entitle the plaintiffs to get Judgment in their favour but the suit in which the issues are raised by way of counter claim also with substantial relief of possession by or on behalf of the defendants. That being so, at this stage, it is not necessary for this Court to interfere with the impugned orders in exercise of revisional jurisdiction as I do not find any material irregularity necessitating interference by this Court.

It cannot be said that the learned trial Judge has failed to exercise jurisdiction vested in him. That being so, I do not find merits in the revision applications. Hence, they are rejected.

The learned trial Judge to expedite hearing of the suit and to give full opportunity to the parties to lead evidence, if any, and then to decide the suit as early as possible according to law, on its own merits.

Learned Counsel for the revision applicants prays for staying operation of this order on the ground that he wants to challenge this order in the Supreme Court. To enable revision applicants to exhaust further remedy, operation of this order shall remain stayed for a period of six weeks.

JUDGE

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