

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.4868 OF 2013.

Shivaji S/o Gangadhar Ghule
Age 29 years, Occ.Agri.,
R/o Sai Park, MHAHADA Park,
N-7, CIDCO, Aurangabad. ... Petitioner.

Versus

1. Bhimabai Sampat Jadhav,
Age 67 years, Occ.Agri.,
R/o Safiyabadwadi, Shiurgaon,
Tq.Vaijapur, Dist.Aurangabad.

2. Devandrasing S/o Amariksing Brar,
Age 37 years, Occ.Business,
R/o Padampura, Aurangabad. ... Respondents.

...

Mr.P.S.Dighe, advocate holding for Mr.V.R.Dhorde,
advocate for the petitioner.
Mr.P.F.Patni, advocate for Respondent No.1.
Mr.A.S.Bajaj, advocate for Respondent No.2.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 18.04.2016.

PER COURT :

1. Heard.

2. The present petition is filed seeking recall of the order dated 10.4.2013, passed by this Court in W.P.No.2658/2013. Mr. Dighe, learned counsel for the petitioner submits that the present petitioner has also filed Special Civil Suit bearing No.39/2012, in which the Court on 15.3.2013, had passed orders below Exh.5 restraining the defendant therein i.e. Respondent No.1 from creating third party interest to the extent of 3 hectares 28 Ares land from Gat No.26. The present Respondent No.2 has also filed Special Civil Suit No.6/2013 against Respondent No.1 in which compromise petition was filed. The Court rejected the application for recording of compromise. Against the said order, Writ Petition bearing No.2658/2013 was filed by the Respondent No.2. The Court allowed the said Writ Petition. The learned counsel submits that the petitioner and Respondent in Writ Petition No.2658/2013 suppressed the factum of order of injunction passed in Special Civil Suit

No.39/2012, wherein the original owner is injuncted from creating third party interest. According to the learned counsel, the original owner has executed agreement of sale in favour of present petitioner for which the suit for specific performance bearing Special Civil Suit No.39/2012 is already pending and prohibitory orders in the said suit are operating. As the factum of order of injunction was not brought to the notice of this Court, the order dated 10.4.2013, was passed in Writ Petition No.2658/2013.

3. Mr.Bajaj, learned counsel for Respondent No.2 submits that the Respondent No.2 who is the petitioner in W.P.No.2658/2013 was not aware of the order of injunction passed in Special Civil Suit No.39/2012, as Respondent No.2 herein was not a party to the said suit. The application filed by the present Respondent No.2 for impleading him as a party in suit filed by the present petitioner was rejected as present petitioner objected to the said application. According to the learned counsel, there was no

order of injunction when the compromise was filed in the suit bearing Special Civil Suit No.6/2013. According to the learned counsel, the only question in W.P.No.2658/2013 was the legality of the order rejecting the application for compromise on account of the fact that permission from the competent authority for the same was required. No error is committed by this Court while passing the order in Special Civil Suit No.2658/2013.

4. I have also heard Mr.Patni, learned counsel appearing for Respondent No.1.

5. Upon hearing the parties, it transpires that when this Court had passed an order on 10.4.2013 in W.P.No.2658/2013, there was already an order of injunction operating against the original owner i.e. Respondent No.1 herein passed in Special Civil Suit No.39/2012. It was the duty of the present Respondent No.1 original owner to bring the factum of prohibitory orders in force against the present Respondent No.1 in all fairness. This Court was not brought to the

notice the prohibitory order passed in Special Civil Suit No.39/2012, wherein the present Respondent No.1 was injuncted from alienating or creating third party interest in the suit property. If the said order would have been brought to the notice of this Court, this Court would have given thought to the said order being in force and the effect of the said order.

6. Without dilating further upon the conduct of the party, the fact that the prohibitory orders were not brought to the notice of this Court is sufficient to recall the order dated 10.4.2013 in W.P.No.2658/2013.

7. It would appear that the present petitioner and the Respondent No.2 both have filed suit for specific performance of contract against the same owner i.e. the present Respondent No.1. Both the suits it appears were pending before the same Court. Now pursuant to the order passed in W.P.No.2658/2013, the decree is passed in Special Civil Suit No.6/2013, of-course, the same is pursuant to the order of this

Court.

8. As discussed above, the order dated 10.4.2013 in W.P.No.2658/2013, is required to be recalled, the said decree passed pursuant to the order of this Court would meet the same fate and will have to be recalled and the said Special Civil Suit No.6/2013, would revive.

9. Both the suits would thereafter be pending before the same Court. It is appropriate that both the suits are decided simultaneously, of-course, evidence will have to be recorded independently in both the suits but both the suits will be required to be decided simultaneously as both the suits are for specific performance of contract against the same owner.

10. I had asked the learned counsel for respective parties about the said course of action. Learned counsel for respective parties on instructions agree for the same.

11. In light of the above, I pass the

following order :

a) The order dated 10.4.2013 in W.P.No.2658/2013 is recalled. Writ Petition No.4868/2013 and W.P.No.2658/2013 are disposed of with direction that suit bearing Special Civil Suit No.39/2012 and Special Civil Suit No.6/2013 shall be decided simultaneously by the common judgment, of-course, the evidence would be recorded independently in both the suits. In light of the fact that order dated 10.4.2013 in W.P.No.2658/2013 is recalled, the learned Judge shall pass ministerial order of recalling the order of decree being passed and restoring Special Civil Suit No.6/2013 to its original position. Even the order rejecting the compromise would not survive as directions are given to decide both the suits simultaneously.

b) Both these Writ Petitions are disposed of with aforesaid directions and observations. No costs.

(S . V . GANGAPURWALA, J .)

asp/office/wp4868.13

