

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

12 WRIT PETITION NO. 7002 OF 2016

DILIP LALASAHEB KOKATE
VERSUS
SHAHAJI LALASAHEB KOKATE AND OTHERS

...
Advocate for Petitioner : N.N. Jagdale h/f. Salunke V.D.
AGP for respondent/State : R.B. Bagul
...

CORAM : T.V. NALAWADE, J.
DATED : 21st November, 2016.

ORDER :

1. The proceeding is filed to challenge the order made by the learned Civil Judge, Junior Division, Osmanabad on Exh. 27 in R.C.S. No. 602/2015. Heard the learned counsel for petitioner.

2. The suit is filed against the petitioner and others by respondent Shahaji for relief of declaration and injunction. It is the case of Shahaji that he has purchased land Gat No. 225 situated at Alni, Tahsil Osmanabad which admeasures 8 H. 74 R. by sale deed dated 12.10.1977. It is the case of petitioner that Deelip, defendant, who is the brother of plaintiff has no concern with the suit property, but he is raising the dispute and so, the cause of action has taken place for filing the suit for declaration

and injunction. It is the case of respondent, defendant that property was purchased by Joint Hindu Family in the name of plaintiff. Already issues were framed in accordance with the reliefs claimed by the plaintiff.

3. By filing application at Exh. 27, present petitioner prayed for framing additional issues. It appears that this application is partly allowed and the Trial Court has already framed the issue like jurisdiction and issue of non-joinder of necessary parties. However, the Court has refused to frame the issue like of res-judicata and tenability of the suit in the present form.

4. The learned counsel for petitioner has produced copy of judgment delivered in R.C.S. No. 231/2009 delivered by Civil Judge, Junior Division, Osmanabad. This suit was filed by the present petitioner for relief of permanent injunction in respect of house property bearing No. 3850, which is also bearing Municipal House No. 2/92 in the record of Local Body. The learned counsel submitted that the said suit is decreed in favour of petitioner. When the suit is filed for relief of injunction, the point of title is not required to be gone in to and so, it cannot be said that the decision of previous suit which was filed in respect

of other property, the principle of res-judicata can operate to the present suit. The property involved is also different and specific relief of declaration is claimed in the present suit. Thus, there is no reason to interfere in the order made by the Trial Court. There is no need to issue notice to other side. The petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/