

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

CIVIL REVISION APPLICATION NO. 299 OF 2015

Anil s/o. Digambarrao Budrukhar
and another

...Petitioners.

Versus

Digambarrao s/o. Bhujangrao Kulkarni
and others

....Respondents.

Mrs. S.A. Budrukhar, party in person, for petitioners.

Mr. M.M. Patil-Beedkar, Advocate for respondent No. 1.

Mr. P.N. Kalani, Advocate for respondent No. 3.

WITH
WRIT PETITION NO. 10899 OF 2014

Digambarrao s/o. Bhujangrao Kulkarni

...Petitioner.

Versus

Anil s/o. Digambarrao Budrukhar
and others

....Respondents.

Mr. M.M. Patil-Beedkar, Advocate for petitioner.

Mrs. S.A. Budrukhar, party in person, for respondent Nos. 1 & 2.

Mr. P.N. Kalani, Advocate for respondent No. 4.

CORAM : T.V. NALAWADE, J.

DATED : 27th April, 2016.

ORDER :

1. The first proceeding, revision, is filed to challenge the order made by learned Civil Judge, Junior Division, Parbhani on Exh. 153 in Regular Civil Suit No. 90/2012. The application

filed by present petitioner for rejection of plaint under provisions of Order 7, Rule 11 of Civil Procedure Code on the ground that the Court has no territorial jurisdiction is rejected by the Trial Court. Writ petition is filed to challenge the judgment and order of Misc. Civil Appeal No. 45/2013, which was pending before District Judge-1, Parbhani and also the order made on Exh. 90 in Regular Civil Suit No. 90/2012 by the same Court. Application at Exh. 90 was filed by plaintiff for relief of injunction to protect his alleged possession over the suit properties and such relief is refused. Both the sides are heard.

2. In the first proceeding, revision, it is the contention of original defendants, present appellants that in the suit, there is challenge to the judgment and decree which was given due to compromise by the Court of Civil Judge, Junior Division, Gangakhed, District Parbhani in the year 1970 and so, the proceeding ought to have been filed in the Court from Gangakhed. Other vague contentions were made, but only this ground is considered by the Trial Court. Present plaint shows that declaration in respect of this compromise decree given in Regular Civil Suit No. 455/1970 is claimed, but other reliefs in respect of some more properties are also claimed. Further, in the past, Tahsil Sonpeth, where two properties from previous suit of

1970 are situated was not having separate Civil Court in the year 1970. This Tahsil was attached to Gangakhed Court. In the said suit, there was one more property situated within jurisdiction of Parbhani city Court. Recently, in or about 2010 a Court came to be created at Sonpeth, but it is a Court of Civil Judge, Junior Division. Present suit is filed in Civil Court, Parbhani and as per the valuation, suit lies in the Court of Civil Judge, Junior Division, though it is assigned to the Court of Civil Judge, Senior Division. Thus, one property of compromise decree lies within the local jurisdiction of present Court and one more property is situated in Tahsil Parbhani in respect of which relief is claimed in the present suit. In view of these circumstances and in view of provision of section 17 of Civil Procedure Code, the Trial Court has held that it has jurisdiction to try the present suit. There are more circumstances like the decision was given on the point of jurisdiction in the past also by the present Court and the copies of the said orders are produced. Thus, even when point involved was decided in the past, the point is tried to be agitated again by the defendants and it can be said that it is an attempt to protract the decision of the suit. The party in person was allowed to argue the matter. This Court has carefully gone through the aforesaid record as a party in person argued the matter. It is not possible to interfere in the order made by the Trial Court as it

has jurisdiction. So, this Court holds that revision needs to be dismissed.

3. The writ petition is filed by original plaintiff of the aforesaid suit. The discussion made above for the purpose of revision and the record shows that compromise decree was given in respect of three suit properties in the year 1970 and present suit came to be filed in the year 2012. One property was shown to be given to the share of present plaintiff in the previous compromise decree by which partition was effected. The said property is not included in the present matter. Admittedly, on the basis of compromise decree, revenue record is created and the defendants and others are shown to be in possession of their respective properties given to them under the compromise decree. The learned counsel for plaintiff, petitioner submitted that the properties were shown in the names of different persons of the family of plaintiff - Digambarrao to save the properties from the provisions of Ceiling Act etc. and there was no actual partition. Such submission cannot be considered at this stage. At present, there is record showing that respective party came in possession on the basis of compromise decree. Due to these circumstances, the Courts below have refused relief of injunction in favour of

plaintiff. Plaintiff is father of defendant Anil. In view of these circumstances, it is not possible to interfere in the orders made by the Courts below.

4. The party in person has placed reliance on the observations made in following cases.

(i) Civil Appeal Nos. 10416-10417 of 2014 dated 20.11.2014 [R. Ranjanna Vs. S.R. Venkataswamy & Ors.] (SUPREME COURT),

(ii) First Appeal No. 726/2013 dated 2.9.2013 [Satish Talakchand Shah Vs. Hirji Bhojraj & Sons and Ors.] (BOMBAY HIGH COURT),

(iii) Civil Revision Application No. 76/2011 dated 10.10.2011 [Manju Narendra Gupta Vs. Meenakshi Ashok Patil and Ors.] (BOMBAY HIGH COURT).

The observations made in aforesaid cases are totally in different context. They are of no help to the defendants in the present matter.

5. In the result, both proceedings stand dismissed. The Trial Court is to dispose of the matter expeditiously and in any case, within six months from the date of receipt of this order.

[T.V. NALAWADE, J.]

SSC/