

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2605 OF 2016

SHRI. MOHAMMAD TAQUIE S/O
MOHAMMAD UMAR ANSARI
AND ANR

...Petitioners

Versus

SHRI ZUBAIR AHMED S/O ABDUL
RAHEEN SHAIKH AND ANR

...Respondents

....

Mr. Amol P. Mhatre, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 01st MARCH, 2016

P.C.

1. Heard Mr. Amol Mhatre, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 12.6.2015 passed by learned Principal District Judge, Thane in Civil Misc. Application No.304 of 2014. By that order, learned Principal District Judge allowed the application and transferred (1) R.C.S. No.225/2008 pending before 4th Jt. Civil Judge, Junior Division, Bhiwandi, (2) R.C.S. No.200/2012 pending before 4th Jt. Civil

Judge, Junior Division, Bhiwandi and (3) R.C.S. No.226/2008 pending before Civil Judge, Junior Division, Bhiwandi to the Court of 3rd Joint Civil Judge, Junior Division, Bhiwandi where R.C.S. No.479/1995 and R.C.S. No.479/2001 are pending. Learned Principal District Judge directed that all the suits will remain in the said Court only.

3. The petitioners instituted R.C.S. No.479/1995 against defendant No.1 Bhiwandi Nizampura Municipal Council (for short, the 'Council') and defendant No.2 Mr. Zubair Ahmad Rahim Shaikh for perpetual injunction restraining the defendants from deleting the name of the plaintiff Mohamed Taki Mohamed Ummer Ansari from the record of rights in respect of part of the Municipal House No. 57 admeasuring 60 ft. north-south and 64 ft. east-west and premises on the first floor situate at Temghar-I, Kalyan Road, Bhiwandi, District-Thane. It appears that the plaintiff also instituted suit in the year 1996 being Special Civil Suit No.44/1996 in the Court of Civil Judge, Senior Division, Thane and the same is renumbered R.C.S. No.200/2012 and is pending before the IInd Joint Civil Jude, Junior Division, Bhiwandi. That suit is instituted for

declaration that the petitioner is owner and possession of the suit premises. Regular Civil Suit No.479/2001 is filed by respondent No.1 herein against the Council and the petitioner herein for perpetual injunction in respect of suit premises and the same is pending on the file of 4th Jt. Civil Judge, Junior Division. R.C.S. No.225/2008 is instituted by respondent No.1 herein against the petitioner for possession and perpetual injunction and same is pending on the file of 3rd Jt. Civil Judge, Junior Division, Bhiwandi. Respondent No.1 has filed R.C.S. No. 226/2008 against Smt. Hafiza Mohammad Umar Ansari. The petitioner is the step son of said Hafiza Ansari. Said suit is pending on the file of Civil Judge, Junior Division, Bhiwandi.

4. Respondent No.1 filed Misc. Application No.304/2014 for transfer of all the suits in any one of the Courts of Civil Judge, Junior Division, Bhiwandi. The petitioner filed reply dated 23.1.2015 *inter alia* contending that R.C.S. No.479/1995 is part heard. The petitioner has filed affidavit of evidence and is under cross-examination. Prayer was therefore was made to transfer the suits to the Court of 2nd Jt. Civil Judge, Junior Division, Bhiwandi where R.C.S. No.200/2012 and R.C.S.

No.225/2008 are pending.

5. By the impugned order, learned Principal District Judge has allowed the application and transferred R.C.S. No.225/2008 & R.C.S. No.200/2012 pending before 4th Jt. Civil Judge, Junior Division, Bhiwandi and R.C.S. No.226/2008, pending before Civil Judge, Junior Division to the Court of 3rd Jt. Civil Judge, Junior Division, Bhiwandi where R.C.S. No.479/1995 and R.C.S. No.479/2001 are pending. Learned Principal District Judge further directed that all the suits shall remain in the said Court only and concerned Judge shall decide the issue as to whether common evidence/joint trial is possible or not.

6. As noted earlier, the dispute in all the proceedings is in relation to the suit property, namely, municipal House No.57. In almost all suites except R.C.S. No.226/2008 the petitioner and respondent No.1 are parties. In R.C.S. No.226/2008, though the petitioner herein is not a party, it is asserted that he is the step son of defendant Hafiza Ansari. That apart, the learned Principal District Judge has transferred all the suits where R.C.S. No.479/1995 is pending. Having regard to the contention

advanced in para-3 of the say filed by the petitioner, I do not find that learned Principal District Judge has committed any error. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. The petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)