

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1734 OF 2014**

Shri Mahavir Devappa Sangme
Vs
Shri Raosaheb Baburang Tardale
and Ors.

Petitioner

.. Respondents

Ms.Priya P. Deo i/b P.B.Deo, Advocate for Petitioner.
Mr.Vikas M. Mali, Advocate for Respondent no.1.
Mr.Balwant V. Patole, Advocate for Respondents no. 2 to 4.
Mr. Dilip B. Shinde, Advocate for Respondents no. 5 to 7.

CORAM : R.G.KETKAR,J.
DATE : 01/04/2016

PC:

1. Heard Ms. Priya P. Deo, learned counsel for the petitioner, Mr Vikas Mali, learned counsel for respondent no.1, Mr. Balwant V.Patole, learned counsel for respondents no. 2 to 4 and Mr Dilip B. Shinde, learned counsel for respondents no. 5 to 7 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 23.1.2014 passed by the learned Jt. Civil Judge, Jr.Dn., Miraj below Exhibits 37 and 41. By that order, the learned trial Judge rejected the applications Exhibits 37 and 41 filed by defendant no.8.

3. Respondent no.1, hereinafter referred to as 'plaintiff' has instituted suit in the Court of Civil Judge, Jr. Dn., Miraj, inter alia, praying for partition of his 1/6th share and separate possession; for declaration that the sale certificate in respect of the property

described in paragraph 1 of the plaint, is illegal and is not binding on the plaintiff's share; for perpetual injunction restraining defendant no.8 from disturbing peaceful possession of the plaintiff.

4. During the pendency of the suit, defendant no.8 took out application at Exhibit-37 on 13.11.2013 under section 9-A on the ground that the plaintiff has not issued notice under section 164 of the Maharashtra Co-operative Societies Act, 1960 before instituting the suit though he has challenged the sale certificate which was issued in pursuance of the auction conducted by defendant no.8. Defendant no.8 also took out application dated 27.11.2013 at Exh.41 under Order VII, Rule 11(d) read with Section 9-A of C.P.C on the ground of bar of the suit in view of Order XXI, Rule 101 of C.P.C Defendant no.8 contended that defendant no.11 had filed Darkhast No.35 of 2012 wherein the application is given by defendant no.1 under Order XXI, Rule 97. In view of Order XXI, Rule 101, independent suit is not maintainable. By the impugned order, the learned trial Judge rejected the applications. It is against this order, defendant no.8 has instituted the present petition.

5. The matter was heard from time to time and was adjourned so as to enable Mr. Mali to take instructions as to whether the plaintiff is pressing prayer clause (b) by which declaration is sought about sale certificate. Mr. Mali states that the plaintiff is

present in the Court. Upon taking instructions, Mr. Mali states that the plaintiff is not pressing prayer clause (b) and deletes the said prayer clause (b). The plaintiff may be given liberty to challenge the sale certificate in accordance with law. Statement on instructions made by Mr Mali is recorded.

6. As the plaintiff is not now pressing prayer clause (b) and in fact is deleting prayer clause (b). It is not necessary to examine correctness of the impugned order. The plaintiff shall carry out amendment in the suit within two weeks from today by deleting prayer clause (b). The plaintiff is given liberty to challenge the sale certificate in accordance with law. Petition is disposed of. Order accordingly.

7. Parties including trial Court shall act on the authenticated copy of the order.

(R.G.KETKAR, J.)