

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5425 OF 2012

Bajrang @ Basavraj Sidram Jangam	...	Petitioner
Vs.		
Raghunath @ Raghunathprasad Sidram Jangam (decd.) through LRs and others	...	Respondents

Mr. Shrishail Sakhare for Petitioner.
Mr. A. M. Kulkarni for Respondents No.1A to 1E.

CORAM : R. G. KETKAR, J.
DATE : APRIL 22, 2016

P.C. :

Heard Mr. Sakhare, learned Counsel for petitioner and Mr. Kulkarni, learned Counsel for respondents at length. Rule. Mr. Kulkarni waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 22.03.2012 passed by the learned Principal District Judge, Sangli below exhibit-1 in Civil Miscellaneous Appeal No.91 of 2012. By that order, the learned Principal District Judge dismissed the application made by the petitioner, hereinafter referred to as 'defendant', for transferring the Regular Civil Suit No.114 of 2012 (old Suit No.316 of 2002) pending in the Court of Civil Judge, Junior Division, Vita (Shri Sasane) to any other Court.

3. Respondents, hereinafter referred to as 'plaintiffs' instituted Suit for recovery of possession of the suit property. Issues were framed and after considering the evidence on record, the learned trial Judge (Shri R.

A. Sasane) ordered return of plaint to the plaintiffs for presenting it in the appropriate Court. The learned trial Judge answered all the issues in favour of the plaintiffs except issue No.2B relating to pecuniary jurisdiction. The learned trial Judge held that Court of Civil Judge, Junior Division has no pecuniary jurisdiction to entertain and try the Suit as the claim made in the Suit exceeds the pecuniary jurisdiction. It is common ground between the parties that the pecuniary jurisdiction of the Court of Civil Judge Junior Division was enhanced by notification dated 04.01.2012 with effect from 16.01.2012. In view thereof, on the date when the Suit was decided viz. 06.01.2012, obviously, the Court of Civil Judge, Junior Division, Vita had no pecuniary jurisdiction to entertain and try the Suit.

4. It is common ground between the parties that the learned trial Judge (Shri R. A. Sasane) is transferred. However, having regard to the finding recorded by the learned Principal District Judge in paragraph 5, the said finding will have to be set aside and the application made by the defendant for transferring the Suit is disposed of as infructuous.

5. Mr. Sakhare submitted that instead of filing Appeal from Order against the trial Court's order dated 06.01.2012, defendant filed substantive appeal, which is dismissed. He submits that the trial Court proceedings may be stayed upto 17.06.2016 so as to enable the defendant to file Second Appeal and obtain appropriate interim order. He states that within two weeks from today, defendant will file Second Appeal challenging the order passed by the learned District Judge. He further states that the time spent in prosecuting this Petition maybe excluded while considering the issue of limitation. Statements made by Mr. Sakhare are recorded.

6. In view thereof, impugned order dated 22.03.2012 is set aside reserving liberty to the defendant to file Second Appeal and application for condonation of delay on the ground that the time spent in prosecuting this Petition may be excluded while considering the aspect of limitation. Proceedings of R.C.S.No.114 of 2012 are stayed upto and inclusive of 17.06.2016. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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