

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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APPEAL FROM ORDER NO. 1177 OF 2015
WITH
CIVIL APPLICATION NO. 1490 OF 2015
IN
APPEAL FROM ORDER NO. 1177 OF 2015

Pramod Harishchandra Pimpale & ...Appellants
Ors.

Versus

Balkrishna Harishchandra Pimpale ...Respondents
& Ors.

.....

Ms. Bhakti Bhosale i/b Rahul Sopanrao Kate for the Appellant.
Mr. Sarwade Bhaskar Jijaba for Respondent Nos.1 & 2.

CORAM : G. S. KULKARNI, J.
DATE : 21st APRIL, 2016.

P. C. :

1. This appeal under Section 104 read with Order 43 Rule 1(u) of the Civil Procedure Code is directed against the judgment and order dated 20.07.2015 passed by the learned District Judge, Palghar in Civil Appeal No. 10 of 2015. By the impugned order, Civil Appeal No. 10 of 2015 filed by the respondents/original plaintiffs was allowed whereby the judgment and decree passed by the learned Joint Civil Judge Junior Division in R.C.S. No. 33 of 2011 dated

10.12.2014 dismissing the suit was set aside and said civil suit was restored to file of the Joint Civil Judge Junior Division, Palghar as also the order dated 14.08.2014 passed on an application below Exhibit 94 filed on behalf of the plaintiff to implead parties to the suit, was also set aside with a direction that the Trial Court reconsiders the said application below Exhibit 94 in the light of the observations made in the impugned judgment.

2. The proceedings in R.C.S. No. 33 of 2011 before the Trial Court pertained to a family dispute whereby ancestral property claimed to be inherited by the plaintiffs and defendants was sought to be partitioned. The case in the suit is that the properties belonging to deceased Govind, devolved on the son Harishchandra who was the father of the plaintiffs and defendant Nos.1 to 3. Harishchandra had two wives. The first wife, namely, Anandi expired in the year 1966 leaving behind the plaintiffs. Harishchandra contracted a second marriage with one Hirubai and from the said marriage Harishchandra had 3 sons, defendant Nos.1 to 3 and 2 daughters, namely, Gulab and Hemlata. The property in dispute was admittedly ancestral land bearing Survey No. 58/5 situated at Mouje Parnali admeasuring 2-66.2 hectares being the suit land.

3. Some time in 2011, the plaintiffs who are sons of

Harishchandra from his first wife Anandibai, noticed that in the 7/12 extracts of suit land, names of defendant Nos.1 to 4 were recorded in the revenue record, on the basis of a will dated 17.11.2005 alleged to be executed by deceased Harishchandra. The will was stated to be registered with the office of Sub-Registrar at Palghar. The contention of the plaintiffs was that Harishchandra was not in the physical condition in the year 2005 to execute such a will. The plaintiffs also contended that in any event the ancestral land could not have been bequeathed by the will in question and that if any effect is given to the will by making entries in the revenue records, that would breach the legal rights of the plaintiffs in the ancestral property. Accordingly the plaintiffs approached to the civil Court in the captioned suit.

4. The appellants/defendants contested the suit on the ground that the plaintiffs had left the family house and the relations of the family were completely severed in view of their adoption by their maternal uncle. It was also contended that the plaintiffs had relinquished their rights in the suit property by executing a release deed dated 05.01.1987. However, it appears that the release deed was not registered. It is also contended that the suit was bad for non joinder of parties as other interested family members who would also have a claim in the said ancestral property were not impleaded as

parties to the suit, and therefore, the suit was bad for non joinder of parties. It was contended that there were names of 21 persons recorded in the 7/12 extract and all these persons were admittedly not parties to the suit. It was thus contended that plaintiffs were required to be non suited on this ground above. Another aspect which the appellants/defendants objected was an application below Exhibit 94 moved on behalf of the plaintiffs, praying for joining necessary parties to the suit. According to the appellants/defendants the said application was filed at a belated stage.

5. The Trial Court, considering the evidence as also the rival contentions of the parties as placed on the record of the suit, reached to a conclusion that the suit is bad for non joinder of necessary parties and accordingly the partition suit came to be dismissed by its judgment and order dated 10.12.2014. Further the plaintiffs' application below Exhibit 94 for joinder of necessary of parties to the partition suit was also rejected.

6. The respondent/plaintiff being aggrieved by this judgment and decree passed by the Trial Court approached in an appeal before the Court of learned District Judge at Palghar. The learned District Judge after taking into consideration all the above facts and considering that the nature of the dispute was a partition

suit, observed that it was necessary for the Trial Court to have granted an opportunity to the plaintiffs to implead the other family members who would become necessary parties to the suit and allowed the appeal by the impugned order and has restored the suit to the file of the Joint Civil Judge Junior Division, Palghar.

7. In assailing the impugned order passed by the learned District Judge, learned counsel for the appellants submits that the order passed by the Trial Court dismissing the suit was justified. He submits that the plaintiffs/respondents were appropriately non-suited as they had not impleaded the other family members as necessary parties. The findings that the suit was bad for non joinder of necessary parties was, therefore, appropriate. It is submitted that Harishchandra had executed a will and in view of the will the plaintiffs/respondents could not have claimed any right, title and interest in the suit property. It is submitted that this is a case of erroneous appreciation of facts and improper exercise of jurisdiction on the part of the learned District Judge.

8. On the other hand the learned counsel for the respondent/plaintiffs supported the order passed by the learned District Judge. Learned counsel for the respondent would submit that admittedly the release deed which was pressed into service on behalf

of the defendants pertaining to immovable properties was not a registered document. It is further submitted that the will of Harishchandra dated 17.11.2005 also would not assist the case of the defendants in as much as there was no dispute on the issue that the property was an ancestral property. He submits that the nature of the proceeding was a partition suit and it was therefore incumbent on the part of the learned Trial Court to take into consideration all these issues and the Trial Court ought to have, accordingly adjudicated the suit in question.

9. I have considered the submissions as made on behalf of the learned counsel for the parties. I have also perused the documents placed on the record as also the impugned order passed by the learned District Judge. In my opinion, there is much substance in the contention urged on behalf of the appellants that all the parties ought to have been granted a fair opportunity to assert their respective legal rights in respect of the suit properties. The suit in question is a suit for partition of the properties of late Harishchandra. There is no dispute that the plaintiffs and the defendants are related to each other and also two daughters are kept out of the suit who may also have their legal rights in respect of the property in question. It was therefore necessary that all the parties are heard in the suit

and their respective rights should also set adjudicated. All these are material issues which would bring about an effective adjudication of the rival claims in respect of the ancestral properties. Learned Trial Court had completely overlooked the nature of the dispute being a partition dispute and that apart from the plaintiffs and the defendants the rights of other parties are also involved. The learned District Judge in the impugned order has properly considered all these issues while coming to the conclusion that there was no effective adjudication of R.C.S. No. 33 of 2011 in dismissal of the suit by the learned Trial Judge by the judgment and order dated 10.12.2014. The learned District Judge in my opinion has correctly set aside the judgment and order passed by the Trial Court.

10. For the foregoing reasons and considering the facts and circumstances of the case I may observe with certitude that there is no error and perversity in the finding recorded by the learned District Judge. Moreover, the impugned order passed by the learned District Judge would be in the ultimate interest of all the parties for a complete and effective adjudication of their rights in the pending civil suit.

11. In the light of the above observations, no interference is called for in the impugned order. The appeal is devoid on merits and

is accordingly rejected. No order as to costs.

12. As the Appeal from Order is rejected nothing survives in the Civil Application which would thus stand disposed of.

(G. S. KULKARNI, J.)