

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 12495 OF 2015

Smt.Sharada Anant Deshmukh. .. Petitioner

Vs

Shri Jagannath Yashwant Deshmukh & ors. .. Respondents

Ms.Gauri Godse, for the Petitioner.

Mr.S.M.Sabrad i/b Mr.Vinod Shinde, for Respondent No.1.

Mr.Vishal Shriyan a/w H.Vahanvaty i/b Khaitan & Co., for
Respondent No.11.

***CORAM : N.M.Jamdar, J.
Saturday, 15 October 2016.***

P.C. :

By the impugned order dated 21 November 2015 challenge in this petition to the application of the Defendant No.1-Respondent No.1 to transpose himself as a Plaintiff in Special Civil Suit No.35 of 2014 filed by the Petitioner, was allowed.

2. When the Petition came up on board on 15 December 2015, the learned Single Judge (*R.J.Ketkar, J.*) passed the following order -

'Not on Board. At the request of Ms Godse, learned Counsel for petitioner, taken up in the production Board. Leave to amend so as to add prayer (bb) for stay of the impugned order is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 21.11.2015 passed by the learned Joint Civil Judge, Senior Division, Panvel below exhibit-69 in Special Civil Suit No.35 of 2014. By that order, the learned trial Judge allowed the application made by the respondent No.1, hereinafter referred to as defendant No.1, for transposing him as plaintiff in Suit bearing Regular Civil Suit No.10 of 2009 which is converted into Special Civil Suit No.209 of 2014 in the Court of Civil Judge, Senior Division, Panvel for partition and separate possession. She submitted that the petitioner apprehended that the defendants in his Suit will create third party interest, and therefore, took out application for injunction. The learned trial Judge issued injunction on 24.02.2014. Aggrieved by that decision, defendants No.10 and 11 filed Appeals from Order in this Court. By order dated 17.11.2014, this Court directed the appellants therein not to enter into agreements and not to create any third party rights in any manner in 24 flats and not to sell those 24 flats till the decision of the Suit.

3. Ms Godse submitted that the said order was modified on 25.11.2014. She submitted that the injunction against the respondent No.1 is continued by this Court and the said order is not disturbed by the Apex Court. She further states that son of the petitioner – Suhas Anant Deshmukh is present in the Court, and upon taking instructions from him, she submits that petitioner has no objection for clubbing the two Suits together and trying the same together. She also submits that without prejudice to the rights and contentions of the petitioner in the pending proceedings, until further orders of this Court, petitioner will neither withdraw nor compromise the Suit instituted by her. Submissions

made by Ms Godse, upon instructions, are recorded.

4. Ms Godse submitted that respondent No.1 cannot be transposed as plaintiff as interests of the petitioner and respondent No.1 are conflicting.

5. In view of these submissions, stand over to 21.12.2015. By way of ad-interim order, there shall be stay to the impugned order. It is made clear that this Court has not stayed the proceedings and pendency of this Petition will not preclude the trial Court from proceeding with the Suit.

6. As respondent No.1 is represented by the Advocate, Ms Godse shall serve proceedings on Advocate for respondent No.1 along with the copy of this order.'

3. The learned counsel for Respondent No.1 submitted that if the Special Civil Suit No.209 of 2014 filed by the Respondent No.1 is heard along with Special Civil Suit No.35 of 2014, he has no objection. In view of this stand taken by the learned counsel for Respondent No.1 on instructions, the order dated 21 November 2015 passed in favour of Respondent No.1 is quashed and set aside.

4. The learned counsel for Respondent No.1 submitted that restraint put on the Petitioner not to withdraw the pending proceedings or compromise the suit without the leave of this Court, should continue. The learned counsel for the Petitioner submits that no such restraint can be put on the Petitioner. Without going into

that aspect of the matter since the Respondent No.1 is a party to the suit instituted by the Petitioner as per the procedure, the Petitioner will have to give notice to all parties in case the Petitioner seeks to withdraw or compromise the suit and the learned Judge will have to decide such application as per law. In view of this position no separate order is required to be passed. Writ Petition is disposed of in above terms.

5. Whether the common evidence on the controversy involved in each of these suits is necessary or not, will be decided by the learned Civil Judge, Panvel, after hearing all concerned.

(N.M.Jamdar, J.)