

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC. CIVIL APPLICATION NO. 53 OF 2015****Nitin Sadanand Dhamale & Ors.****..... Applicants****VERSUS****Smt.Shivani Rakesh Dhamale & Ors.****..... Respondents**

Ms.Manda D.Loke for the Applicants.

Mr.Vivek V.Salunkhe for Respondent No.1.

CORAM : R.D. DHANUKA, J.**DATED : 25th JANUARY, 2016****P.C.**

By this miscellaneous civil application, the applicants (original defendants) seek transfer of Regular Suit No. 77 of 2014 filed by the respondent no.1 in the court of learned Civil Judge Junior Division Mangaon to the court of learned City Civil Court at Mumbai. The respondent no.1 has filed a suit for partition of the properties. The written statement has been already filed by the applicants. Respondent nos. 2, 3 and 4 are also the original defendants before the trial court. Respondent no.2 is supporting the case of the respondent no.1(original plaintiff). Respondent nos. 3 and 4 are supporting the case of the applicants.

2. The applicant no.1 is working in a police department. Applicant no.2 is mother of the applicant no.1 and is about 75 years old. Applicant no.3 is alleged to have been suffering from health problems and is unable to travel frequently. It is the case of the applicants that the applicant no.1 who is a police personnel is not able to leave Mumbai due to service exigencies for attending the proceedings at Mangaon. In support of his contention that the applicant no.2 who is widow and 75 years old is not keeping good health, the applicants have relied upon the

medical certificates in the miscellaneous civil application. It is the case of the applicants that though the applicant no.2 has a place of residence also at Mangaon, she has been staying at Mumbai for quiet sometime for the purpose of taking medical treatment at Tata Memorial Centre, Tata Memorial Hospital.

3. The applicant no.4 is school going and has no knowledge about the property issue and cannot travel alone for defending the case at Mangaon.

4. Learned counsel appearing for the applicants submits that the applicant no.2 is likely to be one of the witness in the suit filed by the respondent no.1 for partition. It is submitted that some of the properties which are subject matter of the partition suit are situated at Mumbai. It is submitted by the learned counsel that it would be thus more convenient and would be in the interest of both the parties that the suit filed by the respondent no.1 for partition in which there are several defendants and most of them staying at Mumbai that suit be transferred to Mumbai under section 24 of the Code of Civil Procedure, 1908. It is submitted by the learned counsel that the applicants would co-operate with the respondent no.1 in expeditious disposal of the suit and would not seek any unnecessary adjournment.

5. Learned counsel for the respondent no.1 on the other hand submits that the medical records produced by the applicant no.2 herself would indicate that the place of residence of the applicant no.2 is at Mangaon. In support of this submission, learned counsel also placed reliance on the written statement filed before the learned trial judge on 19th August, 2014 in which the applicant no.2 has given her address of Mangaon. He submits that no maintenance amount has been paid by the applicants to the 1st respondent who is also a widow. He submits that it

will not be convenient for the respondent no.1 to visit Mumbai for attending the proceedings if the same is transferred from Mangaon to Mumbai. He submits that the respondent no.1 has no place of accommodation at Mumbai.

6. In rejoinder, learned counsel appearing for the applicants states that though in the medical certificate the address of the appellant no.2 is shown that of Mangaon, for quiet sometime, the applicant no.1 is staying at Mumbai for the purpose of medical treatment. It is submitted that the sister of the respondent no.1 has been staying at Andheri and whenever the respondent no.1 will visit Mumbai, she can stay at the residence of her sister. Learned counsel appearing for the applicants on instruction states that her clients would pay a reasonable amount of travelling expenses to the respondent no.1 on the date of her visit to Mumbai for the purpose of attending the court proceedings if transferred to Mumbai.

7. There is no dispute that the respondent no.1 who is the original plaintiff is 24 years old. There are number of parties who are impleaded as defendants to the said suit. Except one defendant, all the defendants are staying at Mumbai. Applicant no.1 is police personnel and is unable to leave Mumbai due to his service exigencies. Applicant no.2 is 75 years old and is widow and is suffering from various diseases and is required to take medical treatment. Applicant no.3 has her own personal problems and is unable to visit Mangaon. Respondent nos. 3 and 4 supports the case of the applicant and applicant no.2 is likely to be one of the witness to the said partition suit. Learned counsel appearing for the respondent no.1 is not in a position to controvert the statement made by the learned counsel for the applicants that the sister of the respondent no.1 has been staying at Andheri and she can stay with her on her visit to Mumbai for attending the court proceedings.

8. There is no dispute that travelling time between Mangaon and Mumbai is around five hours by road. In my view in view of these facts setout aforesaid, the applicants have made out a case for transfer of the suit filed by the respondent no.1 in the Court of learned Civil Judge, Junior Division, Mangaon to the court of learned City Civil Court at Mumbai. In my view no hardship would be caused to the respondent no.1 if any for visiting the court at Mumbai and she can be compensated by payment of Rs.2,000/- per hearing whether matter is heard on the date of hearing or is adjourned. Such payment shall be made by the applicants to the respondent no.1 on the date of hearing itself in cash. In the event of applicants committing any default in paying travelling allowance to the 1st respondent, the 1st respondent would be at liberty to apply for vacating this order.

9. I, therefore, pass the following order :-

- (a) Misc.Civil Application No.53 of 2015 is made absolute in terms of prayer clause (a).
- (b) Learned Civil Judge Junior Division Mangaon is directed to transmit the papers and proceedings in Regular Suit No. 77 of 2014 to the City Civil Court at Mumbai expeditiously.
- (c) The learned trial judge shall make an endeavour to dispose of the proceedings expeditiously.
- (d) All the parties to the proceedings are directed to co-operate with each other and with the learned trial judge in expeditious disposal of the suit.
- (e) No order as to costs.

[R.D. DHANUKA, J.]