

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.4900 OF 2014

(Sou. Aboli Milind Dighe ..vs.. Nitin Yashwantrao Dighe, through his LRs. Smt. Aparna wd/o Nitin Dighe and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 05-01-2016

Heard Shri A.C. Dharmadhikari, learned Advocate for the petitioner, Shri S.L. Kotwal, learned Advocate for the respondent Nos.1 to 3, Shri R.V. Shiralkar, learned Advocate for the respondent No.4 and Ms. Vrushali Bhuyar, learned Advocate holding for Shri S.R. Deshpande, Advocate for the respondent No.5.

2. Special Civil Suit No.68/2009 and Special Civil Suit No.59/2010 have been filed praying for decree for partition and separate possession. In these civil suits, the petitioner and the respondent Nos.1 to 4 are parties. Special Civil Suit No.30/2010 has been filed praying for decree for specific performance of contract and for declaration for cancellation of the sale-deed executed by Shri Nitin Yashwantrao Dighe-predecessor of the present respondent Nos.1 to 3 in favour of the present respondent Nos.5 and 6. In this civil suit, alternative prayer for refund of the amount of consideration is also

made. In this civil suit, the present petitioner and the respondent Nos.1 to 6 are parties. All the three civil suits are pending before the same Court i.e. Court of Civil Judge, Senior Division, Washim. Issues have been framed in all the three civil suits. After framing of the issues, the petitioner filed the application (Exhibit No.52) in Special Civil Suit No.30/2010 praying that the three civil suits be tried together and common evidence be recorded in all the three civil suits. The learned trial Judge has rejected the application filed by the petitioner by the impugned order.

3. Shri A.C. Dharmadhikari, learned Advocate for the petitioner has submitted that the substantial issue in all the three civil suits is regarding the legality of the alleged Will dated 28-06-1993 said to have been executed by Shri Yashwantrao Dighe (father of the petitioner, husband of the respondent No.4 and father of Shri Nitin Yashwantrao Dighe-predecessor of respondent Nos.1 to 3) in favour of Shri Nitin Yashwantrao Dighe. It is submitted that the trial Court has committed an error in not appreciating that recording of common evidence in all the three civil suits will not cause any prejudice to the present respondents and if common evidence is not recorded in the three civil suits, it will adversely affect the petitioner as separate recording of evidence in the three civil suits will give an opportunity to the attesting witnesses of the will-deed to improve their evidence. It is

further submitted that the trial Court has rejected the application filed by the petitioner mainly under the misconception that the prayer of the petitioner is for consolidation of the three civil suits. It is submitted that the petitioner is not praying that the three civil suits be tried together by consolidating them and in the alternative she is restricting her claim for recording of common evidence in the three civil suits.

4. The respondent No.4 had already given her no objection before the trial Court for allowing the application (Exhibit No.52) filed by the petitioner. Shri S.L. Kotwal, learned Advocate for the respondent Nos.1 to 3, on instructions, has given no objection for allowing the petition and consequently allowing the application (Exhibit No.52).

5. I have examined the documents filed on the record of the writ petition. The learned trial Judge has dealt with all the relevant aspects in paragraph Nos.9, 10 and 11 of the impugned order and has rejected the application (Exhibit No.52) after recording reasons for his conclusions. I find that there is neither any patent illegality nor error of jurisdiction which necessitates interference by this Court in the extra ordinary jurisdiction.

6. Shri A.C. Dharmadhikari, learned Advocate for

the petitioner has submitted that the Court is empowered to consolidate the suits and/or to record common evidence in the three civil suits under Section 151 of the Code of Civil Procedure. The learned Advocate has relied on the judgment given by the Hon'ble Supreme Court in the case of ***Chitivalasa Jute Mills vs. Jaypee Rewa Cement*** reported in ***(2004) 3 SCC 85***, to support his submission. There is no dispute that the civil Court can exercise the inherent jurisdiction under Section 151 of the Code of Civil Procedure to consider the prayer as made by the petitioner. However, the impugned order does not suffer from any patent illegality or infirmity and furthermore it is purely an interlocutory order passed by the trial Court after properly appreciating the submissions made by the respective parties and therefore, in my view, it would not be appropriate to interfere with the impugned order.

7. The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

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