

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9784 OF 2017
(Vishwanath Umanj Sankpal Vs. Kadu Shamrao Sapkal and others)

Mr.N.V.Mande, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 30/01/2017 by which application Exh.82 filed by the petitioner/defendant praying for trying the issue of jurisdiction as a preliminary issue, has been rejected.

2. Learned Advocate for the petitioner has strenuously criticized the impugned order. Contention is that, when the suit need not suffer a complete trial and can be disposed of by taking up the issue of jurisdiction, the Trial Court should have allowed the application keeping in view Section 9-A of the CPC.

3. I have considered the submissions of the learned Advocate for the petitioner.

4. RCS No.181/2010 is for declaration and recovery of possession. Issues were cast on 12/08/2014 below Exh.47. After 2 years and 4 months, Exhibit 82 is filed invoking Section 9-A contending that the Trial Court would have no jurisdiction.

5. The Trial Court has rejected the application after concluding that the said defendant has waited for 2 years and 4 months. The plaintiff has commenced the recording of oral evidence by tendering an affidavit in lieu of examination-in-chief. The cross-examination is adjourned at the behest of defendant No.2.

6. It appears from the impugned order that as the recording of evidence has commenced, the Trial Court has expressed a view that the parties could complete the recording of evidence rather than prolong the matter.

7. Merely because a different view could be taken, would not mean that the impugned order could be branded as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)