

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9198 OF 2016

Dattatraya Kashinath Chintamani
Age: 58 years, Occu.: Service,
R/o Flat No.31, Narhari Nagar,
Gulmohar Road, Savedi,
Ahmednagar.

..PETITIONER

VERSUS

1. Janardhan Parshuram Pawar
Age: 72 years, Occu.: Pensioner,
R/o Ashtavinayak Colony,
Pipeline Road, Savedi, Ahmednagar.

2. Sonali Appasaheb Pawar
Age: 37 years, Occu.: Household,
R/o c/o Shivaji Baburao Bhosale (Phutanewale),
House No. 1211, Ganjbazar, Ahmednagar.

..RESPONDENTS

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Mr. V.S. Bedre, Advocate for petitioner.
Mr. B.S. Chondhekar, Advocate for Respondent No.1.
Mr. Zareef Khan Pathan, Advocate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner is aggrieved by the order dated 19th March, 2016 by which application Exhibit 17 filed by the respondents herein has been allowed and Regular Civil Suit No. 571 of 2014 has been stayed till the decision in Regular Civil Suit No. 171 of 2014.

3. I have considered the strenuous submissions of the learned Counsel for the respective sides and have gone through the petition paper book with their assistance.

4. I find that the facts of this case in reference to the first Suit No. 171 of 2014 and second Suit No. 571 of 2014 are quite peculiar.

5. The petitioner/plaintiff in the second suit is the defendant in the first suit i.e. filed by Respondent No.2. The issue common to both the suits is the registered sale deed dated 05th December, 2013. For the sake of clarity, the plaintiff in the second suit is Dattatraya and the plaintiff in the first suit is Sonali. By the said sale deed, a shop is claimed by Dattatraya. Sonali claims in her suit that the sale deed is void and bogus. Dattatraya claims on the basis of the sale deed that his ownership be declared and possession held by Sonali over the said suit property should be handed over to him.

6. Sonali moved application Exhibit 17 in the second suit stating that until the decision in the first suit, the second suit be stayed. The Trial Court while allowing her application has recorded that Sonali has not filed her written statement in the second suit and the said suit proceeds without her written statement as a specific order dated 17th March, 2015 has been passed and the same is not challenged.

7. It appears that if the sale deed is declared void, the suit of Dattatraya would be disposed of without a trial. However, if the sale deed is held to be a valid document, the suit filed by Dattatraya will then proceed on its own merits. The effect of the impugned order is that until the first suit is decided, the second suit would be stayed.

8. Mr. Bedre, learned Counsel for the petitioner – Dattatraya expressed a serious apprehension that even if the first suit filed by Sonali is dismissed, the litigation will not stop at the level of the Trial Court. It would open up appeal proceedings and that could consume years. Until then, his suit would be stayed and would be kept pending. He further prays that if both the suits are clubbed and decided together as all the parties are the same and the subject matter i.e. the sale deed is also common to both the suits, multiplicity of the litigation could be avoided and all the parties would travel together in the entire journey of the litigation.

9. In the light of the above, I find that ends of justice would be made and it would be equitable for all the litigating sides that both the suits are clubbed. Both the suits are pending before two learned Civil Judges Senior Division, Ahmednagar.

10. Considering the above, the impugned order dated 19th March, 2016 shall be kept in abeyance to enable Dattatraya to move an appropriate application before the learned Principal District Judge, Ahmednagar for seeking orders. Since I have concluded that both the suits should be clubbed, I am permitting the petitioner – Dattatraya to file such an application only to enable the learned Principal District Judge, Ahmednagar to decide as regards the allotment of both these cases to a particular learned Judge. Till the learned Principal District Judge, Ahmednagar allots both these matters to an appropriate Court, both the Regular Civil Suit Nos. 171 and 571 of 2014 shall stand adjourned.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V GHUGE, J.)

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