

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7536 OF 2016

Rajendra Sonyabapu Bachkar,
Age-45 years, Occu-Agriculturist,
R/o.Bhalvani, Tq.Parner,
Dist. Ahmednagar

-- PETITIONER

VERSUS

1. Swati Rajaram Takpere,
Age-35 years, Occu-Agriculturist
and Household,
2. Lalita Ambadas Takpere,
Age-43 years, Occu-Agriculturist
and Household,
3. Sonyabapu Laxman Bachakar,
Age-65 years, Occu-Agriculturist,
4. Maroti s/o Sonyabapu Bachakar,
Age-40 years, Occu-Agriculturist,
5. Prakash Reoji Lakade,
Age-50 years, Occu-Agriculturist,

Respondent Nos. 3 to 5 R/o Bhalwani,
Tq.Parner, Dist.Ahmednagar

-- RESPONDENTS

Mr.S.L.Bhapkar, Advocate for the petitioner.
Mr.T.V.Bedre h/f Mr.V.S.Bedre, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/06/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. The petitioner seeks to challenge the order dated 04/07/2016 passed below Exh.20 in RCS No.118/2016 by which the prayer of the petitioner to stay the said suit in view of an earlier filed RCS No.833/2012 has been rejected u/s 10 of the CPC.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides. Mr.Bhapkar submits that the suit property is practically the same as in both the suits.

4. The petitioner alongwith his father has filed the first suit seeking declaration for re-conveyance of the sale deeds and with a further prayer for perpetual injunction. During the pendency of the first suit, 2 defendants namely Popat Dhondiba and Shobha Popat have sold the suit land to respondent Nos. 1 and 2 herein. After a passage of almost 4 years, respondent Nos. 1 and 2 preferred the second suit seeking injunction on the ground that they have been put in possession of the suit property by virtue of the sale deed executed by Popat and Shobha. It is, therefore, strenuously submitted that both the suits are interconnected, but are likely to lead to divergent conclusions which would create a weird situation in

law.

5. Learned Advocates for the respondents submit that in the first suit, the petitioner has prayed for restraining defendant Nos. 1 and 2 Popat and Shobha from alienating the property and for declaring that the sale deed in favour of defendant Nos. 3 and 4, be held illegal and not binding upon the petitioner. The basic claim is against Popat and Shobha. It is then submitted that the second suit has been filed by defendant Nos. 3 and 4 in the first suit who have purchased the land from Popat and Shobha and hence have been put in possession. The petitioner is disturbing the peaceful possession of the said plaintiffs and hence injunction is sought purely on the basis of their possession.

6. I have considered the impugned order in the light of the submissions of the learned Advocates. Mr.Bhaskar has relied upon the judgments of this Court in the matter of Sheela Sohanlal Ghai and others Vs. Snehlata Sohanlal Ghai and others [1999(1) All MR 718] and Gregorio Pereira (deceased) through LR's and another Vs. Damazio Bento Pereira and others [2004(3) All MR 520] to support the contention that when two suits have been filed for the same purpose, the suit filed later in point of time deserves to be stayed.

7. Section 10 of the CPC reads as under :-

*“Stay of suit :- NO Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government ***] and having like jurisdiction, or before [the Supreme Court].*

Explanation : The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.”

8. In the case of Sheela Sohanlal (supra), two suits were filed by the members of the same family in respect of the same property and each part of the family in each suit claimed to be the sole heir and LR of the deceased. This Court, therefore, directed the consolidation of the said suit.

9. In Gregorio Pereira (supra), the first suit was filed for seeking a direction to demolish illegal and unauthorized structures, issue permanent mandatory injunction from making any further construction and temporary injunction if third party rights are

created. In the second suit, the constructions made were sought to be legalized. Considering the effect of Section 10, the judgment in the first suit was set aside and the second appeal was allowed. Consequentially, the judgment in the second suit was also set aside and both the cases were remitted for trial to the Trial Court.

10. The Trial Court has observed in paragraph Nos. 6 and 9, the distinguishing features in the two suits at issue and has also noted that the suit property in both the suits are not identical or of same measurements. In the first suit, area admeasuring 69 R and 66 R in Gat No.91 was the suit property and in the second suit, area admeasuring 84 R of plaintiff No.1 and 84 R of plaintiff No.2 in Gat No.91 was the suit property. Prayers made in the two suits were found to be different.

11. In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous merely because a second view is possible. Even otherwise, the petitioner may take recourse to the provisions of law for clubbing of the matters. It needs to be left to the petitioner to take such steps which would obviously be considered by the competent authorities on their own merits. It is clarified that this Court has not expressed any opinion as regards the

clubbing of the two suits.

12. This petition is, therefore, dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)