

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

925 WRIT PETITION NO. 13767 OF 2017

SARTHAK MANOJ CHAVAN U/G MOTHER
CHITRALEKHA MANOJ CHAVAN AND ANOTHER
VERSUS
KISHANRAO BAPURAO CHAVAN AND OTHERS

...
Advocate for Petitioners : Mr. Dr. Swapnil D. Tawshikar.
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CORAM : **V. K. JADHAV, J.**
DATE : 29th November, 2017.

ORDER:

. I do not find any substance in this writ petition. The learned Principal District Judge, Latur in paragraphs 8 and 9 of the impugned order has observed that the subject matter of both the suits seems to be one and the same and as such, some common issues are bound to be there. The learned Principal District Judge has also observed that in order to avoid the conflicting decision, it would be just and proper to bring both the suits in one Court.

2 The learned counsel for Petitioners submits that in terms of the provisions of Section 24 of the Code of Civil Procedure, the learned Principal District Judge should have taken care to assign the reason for such transfer. The learned Principal District Judge merely on assumptions and presumptions transferred the suits to one Court.

The learned counsel submits that in view of the impugned order passed by the learned Principal District Judge, the Trial Court may treat both the suits as consolidated suits and record the common evidence.

3 On perusal of the impugned order, it appears that the learned Principal District Judge has given more importance to conflicting decision and accordingly, transferred both the suits to the Court of Civil Judge Senior Division, Nilanga. On perusal of the copy of plaint, it also appears that considering the subject matter of the suit, some common issues are bound to be there.

4 The learned counsel for Petitioner placed his reliance in the case of **Indian Overseas Bank, Madras Vs. Chemical Construction Company and others**, reported in, **(1979) 4 Supreme Court Cases 358**, wherein in paragraph 16, the Supreme Court has observed that the principle governing the general power of transfer and withdrawal under Section 24 of the Code of Civil Procedure is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him and the Court should not lightly change that forum and compel him to go to another Court. The learned counsel for Petitioner, however, in the present case has lost

the sight that the proper forum would be the Civil Judge Senior Division and the matters are usually transferred to Junior Division for disposal as per their territorial and pecuniary jurisdiction. Further, the apprehension expressed by the learned counsel for Petitioner appears to be not well founded. The learned Principal District Judge has observed that in order to avoid conflicting decision, it would be just and proper to bring both the suits in one Court. The learned Principal District Judge has not directed for consolidation of the suits nor directed the Trial Court to record the common evidence. In view of the above, I do not find any substance in this writ petition. The writ petition is hereby dismissed. No costs.

[V. K. JADHAV, J.]

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