

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9435 OF 2016

Vilas Gyanoba Shelar & Anr.

... Petitioners

Vs.

Dagdoba Shankar Shelar (Decd.)

through LRs & Ors.

... Respondents

Mr. Girish R. Agrawal, Advocate for the petitioners.

Mr. S.V. Pite a/w. Mr. Mahesh Subramanian, Advocate for respondent nos. 1A, 2 & 3.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 26th April, 2017.

P.C.:

In this Petition, the petitioners are challenging the order dated 28th April, 2016 passed by the learned 7th Additional Small Causes Judge and Civil Judge Senior Division, Pune in Civil Suit No. 188 of 2011. The learned Judge of Small Causes Court has rejected the Application filed by the defendants in Civil Suit No. 188 of 2011 under section 10 of Code of Civil Procedure. The petitioners are the original defendant nos. 10 and 11 in Civil Suit No. 1978 of 2006 which was filed on 5th December, 2006. The said suit was filed Smt. Gangubai Ramchandra Shelar & Ors. for partition and separate possession against 14 defendants. Thereafter, defendant nos. 1 to 8 in the said suit filed another Suit in 2011, which is numbered as 188

of 2011 against defendant nos. 10 and 11 in Suit No.1978 of 2006. Suit No. 188 of 2011 is for possession. Suit No. 1978 of 2006 for partition and separate possession was dismissed on 27th March, 2008, against which First Appeal was preferred by the original plaintiffs. The said First Appeal was dismissed on 7th October, 2014 and now Second Appeal (St.) No. 27017 of 2015 is pending before the High Court. In Suit No. 188 of 2011, the original defendants/petitioners moved an application under section 10 of Code of Civil Procedure and the said application was rejected. Hence, this Writ Petition.

2. The learned counsel for the petitioners submitted that the issue No. 4 was framed by the Court trying the earlier suit, i.e. Suit No. 1978 of 2006 and it was pertaining to the right between defendant nos. 1 to 8, i.e., plaintiffs in Suit No. 188 of 2011 and defendants, who are original defendant nos. 10 and 11 in Suit No. 1978 of 2006. He submitted that the said issue was decided by the earlier Court and therefore, Suit No. 188 of 2011 be stayed till the final disposal of the Second Appeal.

3. The learned counsel for the respondents opposed this Petition

and submitted that the parties in both the suits are different. The suit property in both the suits are different. In Suit No. 1978 of 2006, the suit property was described as 63/4B and in Suit No. 188 of 2011, there is dispute in respect of portion of the suit property, i.e., 63/4B/1.

4. Perused the plaint, judgment passed by the Appellate Court and the impugned order passed by this Court. Under section 10 of CPC, the earlier suit can be stayed if the parties are the same and the matter in issue is substantially and directly one and the same of the issue in the later suit. I am of the view that Suit No. 1978 of 2006 was filed for partition and separate possession and Suit No. 188 of 2011 is only for possession where the parties claim is based on the ground of gratuitous licensee.

5. First Appeal is dismissed. Now the Second Appeal is pending. Under such circumstances, if at all the finding given by the Court in earlier suit may be helpful to the petitioner, however, the case is not made out under section 10 of Code of Civil Procedure. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)