

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8571 OF 2015

Rajendra Himatlal Salot and others	...	Petitioners
Vs.		
Sanjay Bhupatrai shah and others	...	Respondents

WITH
WRIT PETITION NO.3594 OF 2016

Sanjay Bhupatrai Shah and others	...	Petitioners
Vs.		
Rajendra Himatlal Salot and others	...	Respondents

Mr. R. V. Govilkar for Petitioners in Writ Petition No.8571 of 2015 and for Respondents No.1 to 5 in Writ Petition No.3594 of 2016.
Mr. Vishal Kanade i/b. Mr. Kayval Shah for Respondents No.1 to 3 in Writ Petition No.8571 of 2015 and for Petitioners in Writ Petition No.3594 of 2016.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 10, 2017

P.C. :

Heard Mr. Govilkar, learned Counsel for petitioners in Writ Petition No.8571 of 2015 and for respondents No.1 to 5 in Writ Petition No.3594 of 2016 and Mr. Kanade, learned Counsel for respondents No.1 to 3 in Writ Petition No.8571 of 2015 and for petitioners in Writ Petition No.3594 of 2016 at length. Rule. Learned Counsel for the respective respondents waive service. As the contesting parties are before the Court, notice on the rest of the respondents in both the Petitions is dispensed with. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith, and the Petitions are taken up for final hearing.

2. Both these Petitions are directed against the judgment and order dated 02.05.2015 passed by the learned Principal District Judge, Thane in Civil Miscellaneous Application No.65 of 2015. Petitioners in Writ

Petition No.8571 of 2015, hereinafter referred to as 'Salots', had filed application under Section 24 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for transferring Special Civil Suit No.84 of 2012 and Miscellaneous Application No.264 of 2011 to the Court of 3rd Joint Civil Judge, Senior Division, Kalyan where Special Civil Suit No.469 of 2009 is pending. By the impugned order, the learned Principal District Judge partly allowed the application and transferred Special Civil Suit No.84 of 2012 and Miscellaneous Application No.264 of 2011 to the Court of 3rd Joint Civil Judge Senior Division, Kalyan where Special Civil Suit No.469 of 2009 is pending. Prayer for joint trial made by Salots was rejected.

3. Salots have instituted Special Civil Suit No.84 of 2012 in the Court of the Civil Judge, Senior Division, Kalyan inter alia praying for declaration that the agreement dated 18.07.2009 between defendant No.1 - Prashant Kumar Patnaik and defendant No.4 – Sanjay Bhupatrai Shah is null and void and not binding on them; for declaration that the agreement dated 16.04.2008 executed between them and defendant No.1 be performed and enforced and a decree may be passed for specific performance of contract.

4. Petitioners in Writ Petition No.3594 of 2016, hereinafter referred to as 'Shahs', have instituted Special Civil Suit No.469 of 2009 in the Court of Civil Judge, Senior Division, Kalyan inter alia praying for specific performance of contract against defendant No.1 - Prashant Kumar Patnaik among other prayers.

5. In Special Civil Suit No.469 of 2009, Salots filed application under Order 1, Rule 10 of C.P.C. for their impleadment. The learned trial Judge rejected the application by observing that they could file

separate Suit for specific performance of contract. Aggrieved by that decision, Salots preferred Appeal from Order No.154 of 2012. Appeal from Order was disposed of by consent of the parties permitting Salots to file Suit for specific performance of contract on the basis of agreement in their favour within a period of four weeks. Shahs were ordered to be impleaded in that Suit. If such Suit was filed by Salots, they were to be impleaded as defendants in Special Civil Suit No.469 of 2009 filed by Shahs. This Court also directed that both the Suits should be heard and disposed of simultaneously. Matter was moved for speaking to the minutes of the order, which request was rejected on 28.02.2012. Aggrieved by these orders, S.L.P. was preferred before the Apex Court, which was dismissed as withdrawn with liberty to Shahs to move the High Court for recalling the orders.

6. In pursuance of the liberty, Shahs moved this Court by filing Civil Application No.115 of 2013. By order dated 30.06.2014, order dated 09.02.2012 was recalled and Appeal from Order No.154 of 2012 was restored to the file. Appeal from Order was thereafter heard and disposed of on 29.09.2014. It was held that Appeal from Order was essentially challenging the order passed in an application under Order 1, Rule 10 of C.P.C., and therefore, it was not maintainable. It was also pointed out that against the order dated 30.06.2014, Salots intend to prefer S.L.P. before the Apex Court. It was made clear that in case Salots succeed before the Apex Court and the order dated 30.06.2014 is set aside, the inevitable conclusion would be that the order dated 09.02.2012 will be restored. In case Salots do not succeed before the Apex Court, they were given liberty to institute proper proceedings challenging the order dated 08.11.2011 passed by the learned 4th Joint Civil Judge, Senior Division Kalyan below exhibit-104 filed under Order 1, Rule 10 of C.P.C.

7. Mr. Govilkar submitted that the Apex Court has dismissed the S.L.P. challenging the order dated 30.06.2014. In the meantime, in pursuance of the liberty granted on 09.02.2012, Salots instituted Special Civil Suit No.84 of 2012 as indicated earlier. They took out Miscellaneous Civil Application No.65 of 2015 for transferring their Suit and Miscellaneous Application No.264 of 2011 to the Court of 3rd Civil Judge, Senior Division, Kalyan where Special Civil Suit No.469 of 2009 instituted by Shahs is pending. By the impugned order, the learned Principal District Judge has partly allowed the application, as indicated earlier. It is against this order, Salots and Shahs have instituted these Petitions.

8. In support of Writ Petition No.8571 of 2015, Mr. Govilkar submitted that the learned Principal District Judge has observed in paragraph 7 as under:

“7] After considering arguments of respective advocates at the bar, all the proceedings means two suits and one M.A. should be brought in one court, but whether joint trial is possible or not is left with the trial court. I have arrived on such conclusion because subject matter of suit or proceeding is common and rights claimed by the parties in respect of the same property are different. However, for above mentioned reasons I answer point No.1 in the affirmative and pass the following order for avoiding overlapping judgments, inconvenience to the parties and for avoiding inconvenience to the Advocates also.”

9. After clubbing of the proceedings before one Court, the learned Principal District Judge was of the view that whether joint trial is possible or not should be left with the trial Court. However, despite that, by clause 3 of the operative part of the order, the learned Principal District Judge rejected the prayer for joint trial. Mr. Govilkar, therefore, submitted that clause 3 of the operative part of the order deserves to be set aside.

10. On the other hand, Mr. Kanade in support of Writ Petition No.3594 of 2016 submitted that the learned Principal District Judge was not justified in even partly allowing Civil Miscellaneous Application. He submitted that Salots had filed application exhibit-104 under Order 1, Rule 10 of C.P.C. in their Suit, namely, Special Civil Suit No.469 of 2009. That was rejected. In other words, Salots are not parties in Special Civil No.469 of 2009. In both the Suits, Shahs and Patnaiks (land owners) are parties. However, Salots are not parties in Special Civil Suit No.469 of 2009. If at all any inconvenience or hardship is likely to be caused, it will be caused only to Shahs and Patnaiks and not to Salots. He submitted that basically Salots have no locus to maintain Civil Miscellaneous Application No.65 of 2015 for transferring all the proceedings to the Court of III Joint Civil Judge, Senior Division, Kalyan and clubbing the proceedings together.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that Special Civil Suit No.84 of 2012 is instituted by Salots for specific performance of agreement of sale dated 16.04.2008 executed between them and defendant No.1 - Prashant Kumar Patnaik as also for declaration that the agreement of sale dated 18.07.2009 between defendant No.1 - Prashant Kumar Patnaik and defendant No.4 - Sanjay Bhupatrai Shah is null and void and is not binding on them. Shahs have also instituted Special Civil Suit No.469 of 2009 inter alia praying for specific performance of contract against defendant No.1 - Prashant Kumar Patnaik. It is not in dispute that the properties involved in both the Suits are common. In view thereof, I do not find that the learned Principal District Judge committed any error in transferring Special Civil Suit No.84 of 2012 and Miscellaneous

Application No.264 of 2011 to the Court of III Joint Civil Judge Senior Division, Kalyan who is seized of Special Civil Suit No.469 of 2009. As the Suits are essentially for specific performance of contract, involving same property, in order to avoid conflicting judgments, it is desirable that the said Suits are tried by the one and the same Court. In view thereof, I do not find any reason to interfere with clause 2 of the operative part of the impugned order.

12. As far as prayer for joint trial is concerned, I have already extracted paragraph 7 of the impugned order. The learned Principal District Judge was of the view that whether joint trial is possible or not should be left with the trial Court. Despite that, he rejected that prayer. In my opinion, once having left it to the learned trial Judge to decide whether the joint trial is feasible or not, the learned Principal District Judge was not justified in rejecting the prayer. In view thereof, clause 3 of the operative part of the order is required to be interfered with. Learned Counsel for the parties state that the next date of hearing before the trial Court is 25.01.2017. In my opinion, the ends of justice will be served by directing the learned trial Judge to consider whether the joint trial is feasible or not and pass appropriate order. Clause 3 of the operative part of the order stands substituted in the following terms:

“3) The learned trial Judge will consider whether the joint trial is feasible or not and will pass appropriate order, after hearing the parties.”

13. All contentions of the parties in that regard are expressly kept open. The learned trial Judge is requested to decide prayer for joint trial as expeditiously as possible and preferably within two weeks from the date of appearance of the parties, uninfluenced by the observations made in this order. Liberty is reserved to the parties to apply for expeditious

disposal of the Suit. If such application is made, the learned trial Judge will keep in mind that the Suit is of the year 2009 and pass appropriate order. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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