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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.274 OF 2015

Dhananjay S.Chiplunkar & Anr. ..Applicants.

V/s.

Prashant S.Chiplunkar & Ors. ..Respondents.

Mr.N.P.Wagle for the Applicants.

Mr.Ajit Kenjale with Akshay Kamble for Respondent Nos.1 to 4.

Coram : N.M.Jamdar, J.

Date : 5 April 2017

ORAL ORDER

By this application under Section 24 of the Code of Civil Procedure, 1908, the Applicants have sought transfer of the Special Civil Suit No.173/2014 pending before the Court of Civil Judge, Senior Division, Sangli to the Civil Court at Mumbai. The Applicants are the original Defendant Nos.1 and 2 in the said suit.

2. The suit is filed by the Respondents-Plaintiffs for partition of the suit properties. The suit properties are situated at Sangli, Mumbai and in Ratnagiri District. The suit has been instituted on 21 August 2014 and the proceedings are going on. By this application, the Applicants have sought transfer of the suit from

Sangli to Mumbai.

3. I have heard the learned counsel for the Applicants who has drawn my attention to the averments made in the plaint and the grounds made out for transfer. The learned counsel for the Respondents relied upon the orders passed by the learned Civil Judge, Senior Division, Sangli under section 9A as well as under Order VII Rule 11 of the Code.

4. The transfer is sought primarily on the ground of convenience of the Applicants. It is stated that the Applicant No.1 is a Vice Principal in an educational institute at Mumbai and Applicant No.1 is an Advocate. It is stated that for the purpose of this litigation, they have to go to Sangli which is at a distance of 400 Kms. and even majority of the Plaintiffs are residing in Mumbai. It is also contended that the Applicants have school going children and their studies have to be looked after. It was also contended that most important properties are situated in Mumbai.

5. The Applicants had filed an application for framing a preliminary issue as regards the jurisdiction of the Civil Court at Sangli on the ground that the Civil Court did not have jurisdiction in view of the fact that the properties were situated outside its territorial and pecuniary jurisdiction. A preliminary issue was framed and it was held against the Applicants by learned Civil Judge by order dated 14 May 2014. Another application was moved by the

Applicants under Order VII Rule 11 of the Code taking up similar contention, which was also rejected by the learned Civil Judge on 31 July 2015.

6. Nothing is placed on record to show that the Applicants are suffering from grave illness or that they are bed-ridden and cannot travel. On the contrary, it is also pointed out that one of the Plaintiff is almost 70 years old and it will be difficult for her to travel. Road and train connectivity between Sangli and Mumbai is well established, regular and timely. The suit has been filed in view of the property dispute within the family. The Applicants will have to attend if they chose to contest the same. No special grounds are made out. The circumstances which are cited are usually present in such disputes concerning the family properties where the families reside in different cities. If on the argument advanced the suit is to be transferred, almost every other suit will have to be transferred. The argument that the most valuable properties are in Mumbai, is on the aspect of jurisdiction, which has been rejected by the learned Civil Judge. Having failed in taking objection to the jurisdiction under Order VII Rule 11 and also under 9A of the Code, the present application is made. This application is just one more attempt to create a roadblock for disposal of the suit. No circumstances are made out to warrant transfer of the suit to Mumbai. The Miscellaneous Civil Application is dismissed.

(N.M.Jamdar, J.)