

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 928 OF 2017

Dr. Shashikant Ramrao Gaikwad
And Anr.

...Petitioners

Versus

Sou Priyanka Swapnil Vispute
And Ors.

...Respondents

....

Mr.Shriram S. Kulkarni, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 02nd FEBRUARY, 2017

P.C.

1. Heard Mr.Shriram S. Kulkarni, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'applicants' have challenged the judgment and order dated 29.11.2016 passed by the learned Principal District Judge, Nashik in Civil Misc. Application No.98/2016. By that order, the learned Principal District Judge partly allowed the application made by the applicants and transferred Regular Civil Suit No.161/2015 from the file of Civil Judge, Junior Division, Yeola to the file of

Civil Judge, Senior Division, Niphad to be tried along with Special Civil Suit No.05/2015.

3. Chandrakant Ramrao Gaikwad, hereinafter referred to as the 'plaintiff', has instituted Regular Civil Suit NO.80/2010 in the Court of learned Civil Judge, Junior Division, Yeola against defendant No.1 Shashikant, defendant No.2 Sharad, defendant No.3 Lilabai, defendant No.4 Megha, defendant No.5 Mangala and defendant No.6 Prasad *inter alia* praying for partition and separate possession of his 1/3rd share in the suit properties more particularly described in paragraphs-1a to 1d of the plaint. The controversy in the present petition centers around the property described in paragraph-1d, namely, Gat No.218(A) admeasuring 2 H 77 Rs.

4. During pendency of that suit, the plaintiff filed application under Order VI Rule 17 of C.P.C. for impleading (1) Ms. Priyanka Swapnil Vispute and (2) Mr. Rameshwar Dadasaheb Tanpure as defendants No. 7 and 8 on the ground that defendant No.6 Prasad had executed sale deed in their favour on 13.8.2014 in respect of property 1(d) i.e. Gat No.218(A).

5. By order dated 13.4.2015, the learned trial Judge allowed that application. The plaintiff filed application Exhibit-71 in that suit *inter alia* praying for injunction restraining defendants No.7 and 8 from creating third party interest. By order dated 18.8.2015, the learned trial Judge allowed that application. Aggrieved by that order, defendants No.7 and 8 preferred Misc. Civil Appeal No.90/2015, which was dismissed on 12.4.2016.

6. In the meantime, defendant No.6 Prasad has instituted Special Civil Suit No.5/2015 on 13.1.2015 in the Court of Civil Judge, Senior Division, Niphad for cancellation of the sale deed dated 13.8.2014 executed by him in favour of defendants No.7 and 8. Defendants No.7 and 8 have instituted R.C.S. No.161/2015 in the Court of Civil Judge, Junior Division, Yeola on 13.8.2015 for declaration of their ownership on the strength of sale deed dated 13.8.2014 as also for perpetual injunction against the defendants therein from causing obstruction to their possession.

7. Defendants No.3 and 5 in R.C.S. No.161/2015 filed application under Section 24 of C.P.C. for clubbing all the suits

together and placing it before the one Court. By the impugned order, the learned P.D.J. has partly allowed the application. Insofar as prayer for transfer of R.C.S. No.80/2010 for partition is concerned, the learned P.D.J. rejected that prayer. Insofar as transfer of R.C.S. No.161/2015 instituted by defendants No.7 and 8 in the Court of Civil Judge, Junior Division, Yeola is concerned, the learned P.D.J. transferred that suit to the Court of Civil Judge, Senior Division, Niphad where Special Civil Suit No.5/2015 instituted by defendant No.6 Prasad is pending. While rejecting the request for transfer, in paragraph-10, the learned P.D.J. has noted that the suit instituted by Chandrakant for partition was instituted in the year 2010 and he had obtained injunction restraining defendant No.6 from creating third party interest. Defendant No.6 inspite of injunction executed sale deed in favour of defendants No.7 and 8. The controversy in R.C.S. No.80/2010 is whether the suit properties are ancestral properties or not. If that issue is raised in the subsequent suits, certainly till the decision of R.C.S. No.80/2010, those suits will be required to be stayed. The issues involved in other two suits are as regards validity of the transaction dated 13.8.2014 entered into by and between

defendant No.6 and defendants No.7 and 8.

8. The learned P.D.J. thereafter observed that as the purchasers have purchased the property during pendency of the injunction and despite granting of injunction, they won't be entitled to any equitable allotment. At the most, they can claim to have stepped into the shoes of defendant No.6. They cannot insist that Gat No.218(A) should be allotted to defendant No.6. The learned P.D.J. was, therefore, of the view that this is not a fit case for transferring R.C.S No.80/2010 thereby compelling the plaintiff therein to attend the proceedings in Niphad Court.

9. As far as R.C.S. No.161/2015 filed by defendants No.7 and 8 and Special Civil Suit No.5/2015 filed by defendant No.6 are concerned, they are in respect of transaction of sale deed dated 13.8.2014. The learned P.D.J., therefore, transferred R.C.S. No.161/2015 from the Court of Civil Judge, Junior Division, Yeola to the Court of Civil Judge, Senior Division, Niphad to be tried along with S.C.S. No.5/2015.

10. Mr. Kulkarni submitted that the subject matter of the first suit is Gat No.218(A) which is also subject matter of subsequent suits. The parties are also common and in order to

avoid multiplicity of the proceedings and passing conflicting judgments, it is desirable to transfer all the suits to one and the same Court. He further submitted that one of the issues raised in R.C.S. No.80/2010 is about the Will executed by Sitabai in favour of defendant No.6 Prasad on 26.2.1999. For all these reasons, even R.C.S. No.80/2010 should be transferred to the Court of Civil Judge, Senior Division, Niphad.

11. I have considered the submissions advanced by Mr.Kulkarni. I have also perused the material on record. For the reasons recorded in paragraphs-10 and 11 of the impugned order, I do not find that any case is made out for transferring R.C.S. No.80/2010 to the Court of Civil Judge, Senior Division, Niphad. R.C.S. No.80/2010 is essentially for partition and separate possession of the plaintiff Chandrakant's 1/3rd share in the suit properties. Perusal of the prayers in that suit shows that the plaintiff has not challenged the sale deed dated 13.8.2014 executed by defendants No.6 in favour of defendants No.7 & 8. As against this, the subject matter of R.C.S. No.161/2015 and Special C.S.No.5/2015 is one and the same, namely, validity of the sale deed dated 13.8.2014 executed by defendant No.6 in favour of defendants No.7 and 8. In view

thereof, the Petition fails and the same is dismissed. By way of abundant caution, it is clarified that the learned P.D.J. has not stayed the further proceedings of R.C.S. No.80/2010 pending before the learned Civil Judge, Junior Division, Yeola. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)