

Kumar Mahadev Barate and another	...	Petitioners
Vs.		
Town Planning Authority, Pune Town		
Planning and Valuation Department and others	...	Respondents

CORAM : R. G. KETKAR, J.
DATE : MARCH 24, 2017

Heard Mr. Nargolkar, learned Counsel for petitioners and Mr. Metkari, learned AGP for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 17.09.2016 passed by the learned 3rd Joint Civil Judge, Senior Division, Pune below exhibit-68 in Regular Civil Suit No.297 of 2010. By that order, the learned trial Judge rejected the application made by the plaintiffs under Section 10 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for staying proceedings of R.C.S. No.297 of 2010 during the pendency of Suits, namely, R.C.S.No.441 of 2003 and R.C.S.No.432 of 2003 pending in another Court between the same parties.

3. In support of this Petition, Mr. Nargolkar has taken me through the present Suit, namely, R.C.S.No.297 of 2010, filed by Mahadev Ganpat Barate, since deceased, through his legal representatives (petitioners) and plaintiff No.2 - Pravin Mahadev Barate against

respondents No.1 and 2 herein for declaration that the notices issued by respondents No.1 and 2 herein on 20.02.2010 under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 is illegal and for perpetual injunction restraining respondents No.1 and 2 from acting upon the said notices. He submitted that Shyamsundar Sadashiv Gokhale has instituted R.C.S.No.441 of 2003 against petitioners' father, Mahadeo Ganpat Barate for possession of the suit property. Respondents No.3 to 5 herein are legal representatives of said Shyamsundar. Shyamsundar has also instituted R.C.S.No.432 of 2003 against petitioners' father Mahadeo and respondent No.2 herein for mandatory injunction directing defendant No.1 to remove illegal construction made in the suit property among other prayers. He submitted that the suit property involved in all the Suits is common and as the contesting parties in all the Suits are the same, proceedings of R.C.S.No.297 of 2010 deserve to be stayed during the pendency of R.C.S.No.441 of 2003 and 432 of 2003. The learned trial Judge however rejected the application on the ground that the subject matter of R.C.S.No.441 of 2003 and 432 of 2003 and the subject matter of the present Suit is different though some of the parties to the Suit are common. The learned trial Judge observed that the issue involved in the present Suit is not directly and substantially is in issue in R.C.S.No.441 of 2003 and 432 of 2003.

4. After hearing Mr. Nargolkar and after considering the prayers made in the three Suits, I do not find that the learned trial Judge has committed any error. For the reasons recorded in paragraph 7 of the impugned order, no case is made out for interfering with the impugned order under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)