

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2018 OF 2018
(Shivaji Bajirao Aher Vs. Ashok Bajirao Aher and others)

Mr.M.M.Patil (Beedkar), Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/02/2018

PER COURT :

1. The petitioner/original defendant No.2 is aggrieved by the order dated 27/11/2017 passed by the Trial Court, by which application Exh.32 filed by this petitioner has been rejected.

2. The contention of the petitioner is that the impugned order has resulted in entertaining RCS No.317/2015. The plaint should have been rejected under Order 7 Rule 11 (a) and (d) of the CPC since the plaintiff has omitted seeking a specific relief and such omission will result in the suit being untenable in law.

3. It is canvassed that the petitioner is the younger brother of the plaintiff. Defendant No.1 in the suit is the youngest sister of the plaintiff as well as this petitioner. Issue is with regard to ancestral property. The sister has executed a relinquishment deed dated

27/06/2013 in favour of the plaintiff, which would amount to her giving up her share in the ancestral property in favour of the petitioner. As such, the relief of declaration that the relinquishment deeds (two deeds) are not binding upon the plaintiff, relief of cancellation of the relinquishment deeds and further injunction against this petitioner, would not amount to making out any cause of action as the plaintiff has not sought partition in the ancestral property.

4. Reliance is placed upon the judgment of the Hon'ble Apex Court in Muni Lal Vs.The Oriental Fire and General Insurance Company Ltd. and another [AIR 1996 SC 642] in which it is held that Section 34 of the specific Relief Act provides that any person entitled to a legal character or to any right, can institute a suit against any person denying or interested to deny, his title to such property. Omission to seek relief beyond mere declaration would mandate the Court to refuse to grant the declaratory relief.

5. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Venkataraja and others Vs.Vidyane Doureradijaperumal (D) Thr.Lrs. and others [2013 AIR SCW 3063] wherein it is concluded that a tenant seeking a declaration that the

plaintiff is the owner of the suit property and sale made to the defendant was null and void without seeking consequential reliefs when the suit property was in the possession of the tenants, would render the suit untenable as besides declaration simplicitor, eviction has not been sought by the plaintiff.

6. Reliance is placed on the judgment of the Hon'ble Apex Court in Bharvagi Construction and another Vs.Kothakapu Muthyam Reddy and others [AIR 2017 SC 4428] wherein it is held that the expression "law" occurring in Order 7 Rule 11(d) includes not only the legislative enactments, but also includes 'judicial decisions of the Supreme Court'.

7. I find from the impugned order that the Trial Court has taken into account that the plaintiff has filed a suit for seeking a declaration that the relinquishment deeds are not binding on the plaintiff, the relinquishment deeds be declared as illegal, null and void and a further relief of injunction so as to direct defendant Nos. 1 and 2 not to alienate the suit property or create any charge on the suit properties in any manner whatsoever.

8. It is quite obvious that considering the prayers put forth by the

plaintiff, he has expressed his grave apprehension that the defendants brother and sister would attempt to defeat his claim by disposing of the property. Whether he has any legitimate claim and whether the relinquishment deeds would result in taking away his right or whether he would not be entitled to any declaratory relief u/s 34 of the Specific Relief Act, will have to be considered only after the parties lead oral and documentary evidence.

9. However, whether he would be entitled to any injunction and whether his claim would be compromised by the relinquishment deeds, would be a matter of adjudication. As concluded by the Hon'ble Apex Court in paragraph No.4 in Munilal case (supra), any omission by the plaintiff to seek certain specific reliefs under the proviso to Section 34, would mandate the Trial Court to refuse to grant the declaratory relief.

10. As such, in my view, the Trial Court has avoided pre-judging the matter and as is expressed in Munilal case (supra), if a legal handicap is created on account of the plaintiff having not put forth such prayers, which would dis entitle him to any declaratory relief, the Trial Court would surely decide the said suit in the light of the observations made in paragraph No.4 in the Munilal case (supra).

11. As such, this petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)