

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3160 OF 2018

ZINIBAI BABAJI GAVIT AND ANOTHER
VERSUS
GOBAJI PHULAJI GAVIT AND ANOTHER

Advocate for Petitioner : Mr. J.R. Shah.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 11th June, 2018

PER COURT :

1. While issuing notice to the respondents on 27/03/2018, this Court had passed the following order :

"1. The petitioner is aggrieved by the order dated 08/01/2018 by which, Regular Civil Suit No. 15/2014 filed by the petitioners/plaintiffs has been stayed till the final decision in Regular Civil Suit No. 2/2007.

2. Learned advocate for the petitioners/plaintiffs submits that both these suits can be clubbed and could be tried together, rather than staying the subsequent suit which has been filed by the petitioners/plaintiffs for safeguarding their rights with regard to the immovable property.

3. Issue notice before admission to the respondents, returnable on 08/06/2018.

4. *Until the returnable date, the impugned order dated 08/01/2018 shall stand stayed.*

5. *Copies of the petition paper book shall be supplied for issuance of notice to the respondents, on or before 10/04/2018, failing which, this petition shall stand dismissed without reference to the Court on 11/04/2018."*

2. Despite service of Court notice, the respondents have neither appeared in person nor through an advocate.

3. I have heard the learned advocate for the petitioners and have gone through the petition paper book and the six grounds formulated by him.

4. I find from the impugned order that the Trial Court has noted in paragraph No. 6 that :

"In the present case, the parties in both the suit are same and subject matter is also the same. In both the suit main relief as to ownership is the same. Only incidental reliefs are different. Present suit is for possession on the basis of ownership and previous suit is for declaration of ownership. If the earlier suit is decreed, decision given therein would operate as res-judicata in the subsequent suit i.e. present suit and defendant

would not be able to ask for possession on the basis of ownership.”

[Reproduced verbatim]

5. It is, therefore, apparent that though both the suits involve the same parties, one suit is filed for seeking possession on the basis of ownership and the earlier suit is for seeking declaration of ownership. The Trial Court agrees that incidental reliefs that are sought in both the suits are different. As such, it would have been appropriate for the Trial court to club both the suits which are before the same Court so as to ensure that the claims put forth by the rival parties would be adjudicated upon suitably. As the same Court is dealing with both the suits, there is no conflict of jurisdiction.

6. It cannot be ignored that a decision in the previous suit would no doubt bind the parties. However, the plaintiffs in the subsequent suit would be deprived from putting forth their claims as they are seeking possession over the suit property on the basis of their ownership. No loss or harm would be caused to any of the litigating sides, if both the suits are decided together. This order is being passed in the peculiar

facts of this case, without laying down any precedent.

7. Considering the above, the impugned order dated 08th January, 2018 passed below Exhibit 28 stands modified. R.C.S. No. 02 /2007 and R.C.S. No. 15/2014, shall be adjudicated upon by the Trial Court by clubbing those two matters. This petition, is therefore, partly allowed.

(RAVINDRA V. GHUGE, J.)

S.P.C.