

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8064 OF 2016

- 1] Chandrakant S/o Narharrao Shinde,
Age : 47 years, Occu. Service and Agri.
- 2] Shashikant S/o Narharrao Shinde,
Age : 45 years, Occu. Service & Agri.

Both R/o Mauje Ghat Nandur,
Tq. Ambajogai, District : Beed

.. Petitioners

Versus

- 1] Zilla Parishad, Beed,
Through Chief Executive Officer,
Office of Zilla Parishad, Beed
Tq. and Dist. Beed
- 2] Primary Health Centre Ghatnandur,
Through Medical Officer,
Primary Health Center Ghatnandur,
Tq. Ambajogai, Dist. Beed
- 3] Animal Husbandry Development
Officer and Panchayat Samiti,
Ambajogai, Dist. Beed
- 4] Animal Husbandry Development Officer,
Animal Husbandry Hospital,
Class-I, Ghatnandur,
Tq. Ambajogai, Dist. Beed
- 5] The Sub Divisional Executive Engineer,
Department of Water-Supply,
Panchayat Samiti, Parli-Vaijnath,
Tq. Parli-Vaijnath, Dist. Beed
- 6] The Office of the Grampanchayat,
Ghatnandur, Through Gramsevak,
Tq. Ambajogai, Dist. Beed

7] Ashok Raosaheb Deshmukh,
Age : 64 years, Occu.: Agri.,
R/o. Ghatnandur, Ambejogai,
Tq. Ambejogai, Dist. Beed

.. Respondents

...
Mr. S.J. Salunke, Advocate for petitioners
Mr. A.D. Aghav, Advocate for respondents no. 1 to 6
Mr. E.P. Sawant, Advocate for respondent no.7
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 02-07-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for petitioners, learned counsel appearing for respondents no.1 to 6 and learned counsel for respondent no.7, finally by consent.

2. The petitioners question propriety and legality of order dated 12-02-2016 passed on exhibit - 1 by learned civil judge (senior division), Ambajogai in regular civil suit no. 171 of 2012.

3. Learned counsel for petitioners points out that regular civil suit no. 163 of 1986 had been instituted by petitioners seeking declaration of ownership and perpetual injunction against defendants no. 1 and 2 therein, in their capacity as chairman and secretary of Jai Bhavani Milk Society, Ghatnandur, Tq. Ambajogai,

Dist. Beed in respect of area of about 40' X 50', as referred to in paragraph no. 2 of the plaint in that suit. Said suit had been dismissed by trial court, however, in appeal, the suit had been decreed and second appeal no. 428 of 2011 is filed and same is pending before this court. Vide order dated 24-04-2012 passed in second appeal no. 428 of 2011, this court had framed questions as to whether the suit was maintainable without the prayer for recovery of possession of suit property and whether the suit is bad for non-joinder of necessary parties.

4. Subsequently, petitioners, who were plaintiffs no. 1 and 2 in regular civil suit no. 163 of 1986 have instituted regular civil suit no. 171 of 2012, seeking relief of declaration of ownership and possession in respect of properties bearing city survey no. 564, 565, 567 and 566 comprised in erstwhile *Gat* no. 710 against defendants no.1 to 6, which are Zilla Parishad, Beed, Primary Health Center, Ghatnandur, Live Stock Officer (Extension), Panchayat Samiti, Ambajogai, Live Stock Officer, Animal Husbandry, Ghatnandur, Sub-Divisional Executive Engineer, Water Supply, Parali Vaijnath and Gram Panchayat, Ghatnandur, seeking *inter-alia* declaration that they are the owners of city survey no. 564, 565, 567 and 566, restraint on defendants no. 1 to 5, for possession and for *mesne* profits. Defendants appeared and filed

written statement in the suit. Issues were framed, evidence was led and the matter had been pending for final arguments. He submits, at such a stage of matter, impugned order has been passed, observing that defendants no. 1 and 2 in previous regular civil suit no. 163 of 1986 have challenged the decree passed by first appellate court before the high court in second appeal no. 428 of 2011 and in said proceedings, the plaintiffs - petitioners have prayed for declaration of ownership and possession of suit property bearing *Gat* no. 710 (old survey no.434) admeasuring about 1 *Hectare* and 55 *Are* situated at Ghatnandur. It has further been observed that the plaintiffs have already claimed same relief in respect of the suit property in earlier civil suit, bearing regular civil suit no. 163 of 1986 against Ashok Raosaheb Deshmukh and Shankarrao Daulatrao Chavan. The dispute in respect of ownership of suit property is subjudice before the High Court and that in earlier suit, the present defendants had not been added as necessary parties. The court further went on to observe that in present suit as well, as in earlier suit, the plaintiffs have claimed same relief in respect of same suit property and thus, stayed trial of the suit till final decision in second appeal.

5. Learned counsel for petitioners vehemently submits that the court has been in gross error in appreciating the facts.

It has not been taken into account suit property in the earlier suit had been different from the ones involved in present matter. He submits that the court has cursorily dealt with the matter and has committed an error in staying the proceedings in the present matter.

6. On the other hand, learned counsel for respondent no.7 submits that defendants in that suit i.e. chairman and secretary of concerned milk society have derived the property from the same authority (Rural Development Department) and the authorities, who are defendants in present suit bearing regular civil suit no. 171 of 2012 have also derived the property from the same department. In case, the decision in present suit goes against defendants, that may impinge upon decision in second appeal and it is likely that in such a case, respondent no. 7 would lose out in the litigation without being heard.

7. Learned counsel for respondents no.1 to 6 submits that the subject matter involved in the present case and the earlier case, are similar and since present defendants were not parties, a substantial question of law about non-impleading of necessary parties, has been raised and framed. He submits that while the subject matter is similar, it does not appear that the order passed may be faulted with. He purports to refer and rely on decision of

this court in the case of *Aspi Jal Jal Benjon Jal and anr. Vs. Khushroo Rustom Dadyburjor* reported in 2013 (4) Bom.C.R. 277 whereunder, according to him, the court had considered in the interest of justice, subsequent suit filed ought to be stayed since the issues involved in both the suits are similar.

8. Having heard learned counsel for the parties as aforesaid, in the first place, section 10 of the Code of Civil Procedure, 1908, may have to be taken into account where, in any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title and where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. It is nobody's case that the parties in the present matter are the same as involved in the earlier suit and it may have to be noted that there is no dispute in respect of the properties concerned in the two suits are not the same.

9. Since requirements of section 10 of the Code of Civil Procedure, 1908, do not appear to get satisfied in the present matter, the impugned order is rendered unsustainable.

10. In the circumstances, petition succeeds. Impugned order dated 12-02-2016 passed below exhibit - 1 by learned civil judge (senior division), Ambajogai in regular civil suit no. 171 of 2012 is set aside.

11. It is for the respondent no.7, to take up such measures, as are available and advised in law.

12. Writ Petition stands disposed of.

13. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/