

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10919 OF 2018

MARUTI GOPAL KASBE AND OTHERS
VERSUS
VINAYAK SOPAN SOMVANSHI AND OTHERS

Advocate for Petitioners : Shri I.D. Maniyar.
AGP for Respondent Nos. 2 to 5 : Mr. K.S. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 29th September, 2018

PER COURT :

1. The petitioners are aggrieved by the order dated 10/08/2018, passed by the learned Trial Court, by which, application Exhibit 75, filed in R.C.S. No. 432/2018, praying for dismissing the suit on account of the principle of *res judicata*, under Section 11 of the Code of Civil procedure, is rejected.

2. The Trial Court has concluded that the earlier suit bearing R.C.S. No. 365/2005 was filed as against the private parties and in the new suit No. 432/2015, the State of Maharashtra through the Collector, the Deputy Collector and Land Acquisition Officer, The Sub-Divisional Officer, Renapur and Tahsildar, Renapur, have also been arrayed as respondent. The Trial Court has concluded that the issue of maintainability of the second suit can be considered along with all other suits.

3. The learned counsel for the petitioner has strenuously criticized the impugned order. He has drawn my attention to the 12 grounds formulated in the memo of the petition. It is insisted that the suit property described in 2005 suit is identical with the suit property described in the 2015 suit. Several other points have been canvassed to support the contention that Section 11 of the C.P.C. would bar the suit of 2015.

4. I find from the copies of the amended plaint in the 2015 suit and the suit property described in the 2005 suit as under :

(A) Mankarnabai was the plaintiff in the earlier suit claiming a declaration of title with regard to land Gat No. 72 to the extent of 2 Hectors and 60 Ares lands out of 7 Hectors and 45 Ares situated at Motegaon.

(B) In the 2015 suit, the plaintiff is Vinayak Sopan Somwanshi who seeks a declaration of ownership to the extent of 81 Ares land situated in the north-west corner portion out of Gat No. 72, at village Motegaon.

(C) In the 2005 suit, agricultural land of Kantabai was situated on the east side and in the 2015 suit, remaining land of Mankarnabai is situated on the east side.

(D) The land of Bhaurao Somwanshi is situated on the west side in both the suits.

(E) The land of Vaijnath Gajraji is at the south side in the 2005 suit and the remaining land of Mankarnabai is situated on the south side in the 2015 suit.

(F) The new and old gavthan is situated on the north side in both the suits.

4. I am, therefore, at this *prima facie* stage, unable to accept the contention of the petitioner that the 2015 suit should be declared as being barred by the law of *res judicata* under Section 11 of C.P.C. before the trial in the suit. Disputed questions will have to be gone into by the Trial Court who has concluded in the impugned order that he would frame an issue with regard to the objection raised by these petitioners and the said issue can be tried along with all other issues.

5. In view of the above, this petition being devoid of merit, is dismissed. It is, however, made clear that the observations of the Trial Court in the impugned order as well as the *prima facie* observations of this Court, are restricted only to the issue as to whether the suit should be dismissed at the threshold. As such, after the issue of *res judicata* is framed by the Trial Court, it shall decide the suit in relation to all the issues on their own merits.

(RAVINDRA V. GHUGE, J.)