

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 3 OF 2016

Dadarao s/o Machindra Maharnor,
Age : 38, Years, Occu: Agri,
R/o Bagpimpalgaon, Tq. Georai,
Dist. Beed.

...Applicant

Versus

Subhan s/o Appa Shendge,
Age: 75 years, Occu: Agri,
R/o Bagpimpalgaon, Tq. Georai,
Dist. Beed.
(Died Through L.Rs.)

1A) Santubai w/o Ganpat Jankar
Age: 45 years, Occu: Agril.
R/o. Dawarwadi, Tq. Paithan,
Dist. Aurangabad.

1B) Mayanabai w/o Limbu Kale,
Age; 40 years, Occu: Agril.

1C) Kantabai w/o Shridhar Mahanor,
Age: 35 years, occu: Agri,

1D) Ashok s/o subhanrao Shendge,
Age: 30 years, Occu: Agri,

No. 1B to 1D R/o Bagpimpalgaon,
Tq. Georai, Dist. Beed. ...Respondents

...

Mr. V. P. Sawant, Advocate for applicant
Mr. S. S. Phatale with S. M. Wakude, Advocate for
respondents

...

[CORAM: SUNIL P. DESHMUKH, J.]

Date: 11th October, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Present civil revision application has been moved against order dated 5th August, 2015, passed by the civil judge junior division, Georai on application exhibit-1 in regular civil suit no. 264 of 2012.

3. Briefly referred to, it is applicant's case that respondent-plaintiff's son-in-law (Shridhar Machindra Maharnor) had filed regular civil suits bearing no. 179 of 1998 and 223 of 2010 in respect of suit property. In all these civil proceedings, parties and properties were the same as also various other suits viz. regular civil suits no.121 of 2004, 273 of 2005, 221 of 2008, 224 of 2009. It is contended by applicant that in all these litigations plaintiff was the witness on behalf of Shridhar Machindra Maharnor. Present suit bearing no. 264 of 2012, against petitioner-defendant is also in respect of very same property. It is stated that in order to harass defendant,

plaintiff has filed present suit at the behest of Shridhar Machindra Maharnor.

4. Learned counsel for petitioner submits that present suit deserves to be thrown out by the principle analogous to *res-judicata* and also being not maintainable pursuant to Order II, Rule 2, of the Code of Civil Procedure, 1908 and is, thus, liable to be rejected.

5. Issue with respect to maintainability of suit had been framed as preliminary issue and parties were let opportunity to lead evidence. Considering submissions and evidence on either side, learned judge under impugned order held that suit is maintainable, dismissing defendant's challenge to maintainability of suit.

6. Learned counsel for petitioner, Mr. Savant contends that in all the litigations under various suits were by the son-in-law of respondent-plaintiff and plaintiff had been his witness. Property involved in all said suits and the property involved in the present suit is the same. As such, it is discernible that son-in-law is behind the litigation and it is him who is truly litigating. He, therefore, submits that the principle of *res-judicata* would apply and the trial court

should have declined to allow plaintiff to proceed with prosecution of litigation.

7. Learned counsel for respondents-plaintiff, Mr. S. S. Phatale submits that parties in previous litigations referred to and the parties in present litigation are different persons and present respondent-plaintiff had never been party to those litigations. Apart from that, he contends, cause of action in present suit is different than those involved in earlier litigations. He submits that none of the requirements, as would be necessary for considering matters to have been covered by provisions as referred to, cannot be said to have been satisfied. He, therefore, submits that civil revision application is liable to be dismissed.

8. Perusal of impugned order dated 5th August, 2015 passed by the civil judge, junior division, Georai, shows that the conditions which are required to be satisfied under provisions of Order II, Rule 2 and even Order VII, Rule 11 of the Code of Civil Procedure cannot be said to govern present situation in order to decline prosecution of litigation. Present respondent -plaintiff in present suit was not party to previous suits. Causes of action in previous

ones do not appear to be the same as in present suit and it appears to be different.

9. Having regard to aforesaid, it does not appear that trial court has committed any error while passing impugned order dated 5th August, 2015. Civil revision application does not appear to carry any substance.

10. Civil revision application is dismissed. Rule discharged.

[SUNIL P. DESHMUKH, J.]