

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 9090 OF 2016

Kisan Balbhim Varpe

...Petitioner

Versus

The State Of Maharashtra

And Ors

...Respondents

....

Mr.Sujay N. Gangal a/w. Mr. Raviraj Shinde, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 05th MARCH, 2018

P.C.

1. Heard Mr.Sujay Gangal, learned counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 9.10.2015 passed by the learned Principal District Judge, Solapur in Civil Misc. Application No.31/2015. By that order, the learned Principal District Judge rejected the application made by the petitioner under Section 24 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') for transferring R.C.S. No.235/2008 pending on the file of Joint Civil Judge, Junior Division, Madha to the Court of Civil Judge, Senior Division at Barshi where R.C.S. No.157/2014 is instituted by him.

3. Mr. Gangal invited my attention to Section 33(2)(a) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'), which lays down

that notwithstanding anything contained in Clause (b) of sub-section (1) thereof, the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 (IX of 1887) and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area. He, therefore, submitted that the learned Principal District Judge committed error in rejecting the application.

4. Mr. Gangal fairly invited my attention to the order dated 29.2.2016 passed by this Court (Coram: R.M. Savant, J.) in Writ Petition No.873/2016 [Sanjay Chandu Kshirsagar and another vs. The State of Maharashtra and others] and submitted that the suit property in the present case and the suit property in that Petition are adjoining and the cause of action in both the suits is identical. He submitted that the controversy raised in this Petition is covered by that order.

5. Section 33(2)(a) of the Act reads thus :

“33. Jurisdiction of courts.

(1) xxxxxx

(2)(a) Notwithstanding anything contained in Clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under

the Provincial Small Causes Courts Act, 1887 (IX of 1887), and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;”

6. A perusal of the above extracted section shows that discretion is conferred on the District Court for withdrawing a suit pending in a Court of Small Causes established in any area under the Provincial Small Causes Courts Act and transferring the same for trial or disposal to the Court of the Civil Judge, Senior Division having ordinary jurisdiction in such area. In the present case, the proceedings are pending in two Courts - one being Court of Civil Judge, Senior Division, Barshi and another being Court of Civil Judge, Junior Division, Madha. In other words, the proceedings are not pending in the Small Causes Court. In view thereof, Section 33(2)(a) of the Act has no application to the facts of the present case.

7. That apart, the controversy raised in this Petition is expressly covered by the order dated 29.2.2016 passed by this Court (Coram: R.M. Savant, J.) in Writ Petition No.873/2016 [Sanjay Chandu Kshirsagar and another vs. The State of Maharashtra and others]

8. In view thereof, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)