

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2686 OF 2017

Nalini Punamchand Joshi & Anr.

...Petitioners

Versus

Babulal Balkisan @ Balkarshan Bays & Anr. ...Respondents

.....

Mr. S.R.Chowkidar, Advocate holding for Mr. I.D.Maniyar,
Advocate for the Petitioners.

Mr. V.D.Gunale, Advocate for the Respondent No. 1.

.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 19-07-2019.

PER COURT :

01. I have heard the learned Advocate for the
respective parties.

02. This Court (Coram : S.B.SHUKRE, J) had passed an
Order on 16.3.2017 as under :

1. Heard learned counsel for the petitioners.

Issue notice to respondents for final disposal
returnable on 6th April 2017.

2. Meanwhile, ad-interim stay to the effect and
operation of the Order dated 19.7.2017 till

next date. It is made clear that, the stay so granted shall have the effect of reviving the pendency of the application Exhibit 85, which pendency shall be appropriately considered by the trial Court.

03. There is no dispute that if the Govt / Revenue authorities are party to the proceedings, the suit would lie before the learned Civil Judge, Senior Division. The plaintiffs have deleted some of the parties. When original defendant Nos. 3, 4 and 6 to 11 were deleted and some of the properties were also deleted with the leave of the Court, the District Collector, the Tahsildar and the Nayab Tahsildar were also deleted. The valuation of the property was also reduced. As a consequence, the suit preferred by the plaintiffs could be maintained before the learned Civil Judge, Junior Division. Section 15 of the Code of Civil Procedure mandates that every suit shall be instituted in the Court of the lowest grade competent to try it.

04. In view of the above, the said suit would be tenable before the Civil Judge, Junior Division at Devni, District Latur. I find from the impugned Order that the Trial Court has erroneously concluded that it would not be just and proper to return the plaint to the plaintiff to

present it before the appropriate Court as the Civil Court, Senior Division can try and entertain any suit though it is below the pecuniary jurisdiction. It is also held that there is no bar under the law for the Civil Court, Senior Division to proceed with such a suit. I find that these conclusions are in contradistinction to Section 15 of the Code of Civil Procedure.

05. In view of the above, this petition is allowed. The impugned Order dated 19.1.2017 is quashed and set aside. Application Exh. 85 stands allowed and Special Civil Suit No. 7/2015 shall stand returned to the plaintiff.

06. The learned Advocate for the plaintiffs submits that this Court may fix the date 29.7.2019 for return of plaint before the learned Civil Judge, Senior Division, Udgir so that the plaintiff can collect the papers and file an appropriate suit before the appropriate Court. The said request is accepted.

07. The Court of the learned Civil Judge, Senior Division, Udgir shall return the suit papers to the plaintiff on 29.7.2019. and the plaintiff can thereafter file the suit before the appropriate Court. The time spent by the plaintiff before the learned Civil Judge,

Senior Division, Udgir till the passing of this Order shall be considered as a ground under Section 14 of the Limitation Act, 1963 in the event the issue of condonation of delay arises.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-