DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9590 OF 2018

Narayanrao Govindrao Patil (since deceased)
through LR Kuldeep Narayanrao Patil ..Petitioners
vs.
Abdul Rahiman Ibrahim Shikalgar (since deceased)
through LRs. & ors. ..Respondents

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Ms. Akanksha Helaskar a/w. Shri Ashutosh M. Kulkarni for petitioners.
Ms. Rati S. Sinhasane for respondent Nos. 1A to 1E.

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CORAM : M.S.KARNIK, J.

DATE : 9th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioner is the original defendant No.2 in Regular Civil Suit No. 467 of 2000.

3. The order under challenge is passed below Exhibit 168 allowing the plaintiff's request for recording common evidence in Regular Civil Suit No.276/2005 and Regular Civil

Suit No. 467/2000. Regular Civil Suit No. 467/2000 is filed by present respondent No.1- original plaintiff. Regular Civil Suit No. 276/2005 is filed by the present petitioner – defendant No.2.

4. Defendant No.2 opposed the application at Exhibit 168 by contending that as the parties in two suits are different and therefore, common evidence cannot be recorded. However, defendant No.2 had no objection if the suits are tried simultaneously. The trial Court passed an order below Exhibit 168 recording that defendant No.2 has no objection and hence application below Exhibit 168 is granted.

5. Learned counsel for the petitioner would submit that by filing say at page 37 of the paper-book, defendant No.2 had opposed the application below Exhibit 168 and they had not consented or given their no objection to allow the application below Exhibit 168. According to learned counsel for the petitioners, the properties are adjoining each other.

6. Learned counsel for the respondents supported the impugned order. She would submit that the properties in question are same. She would further submit that even defendant No.2 has no objection if the suits are tried simultaneously. In such circumstances, according to her, no interference is warranted in the order passed by the trial Court in as much as no useful purpose will be served if the evidence is recorded separately in these two suits which otherwise are in respect of the same properties.

7. Be that as it may, I find from the say filed by defendant No.2 below Exhibit 168 that defendant No.2 had an objection for leading common evidence in two suits. The trial Court proceeded on the footing that defendant No.2 has no objection. The order therefore calls for interference.

8. The impugned order passed below Exhibit 168 is quashed and set aside.

9. The trial Court to rehear the application below Exhibit 168 on its own merits and in accordance with law without being influenced by any observations made by me in this order.

10. The Petition is partly allowed with no order as to costs.

(M.S.KARNIK, J.)