

WRIT PETITION NO. 11346 OF 2017

Smt. Sudha Dattatray Khandekar & Anr.	...	Petitioners
Vs.		
Sharad Sakharam Deshpande	...	Respondent

Mr.S.V. Pitre for Petitioners.
Mr.B.R. Mundlik for Respondent.

CORAM : A.S. GADKARI, J.
DATE : 9th March 2020.

P.C. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioners/original plaintiffs have impugned Order dated 14th June 2017 passed below Exhibit-48 in Special Suit No. 127 of 2013 by the 4th Jt. Civil Judge Senior Division, Kolhapur, thereby partly allowing the application preferred by the petitioners under Order 14 rule 5 of the Civil Procedure Code (for short, “Code”).

2] Heard Mr.Pitre, learned counsel for the petitioners and Mr.Mundlik,
learned counsel for the respondent. Perused the record.

3] The record indicates that, the plaintiffs have filed the aforesaid Special Civil Suit No. 127 of 2013 for declaration and possession of the suit

property and for other consequential reliefs. In the said Suit, the respondents/original defendants had filed an application under Order 7 Rule 11(d) of Code for rejection of plaint on the ground that, no cause of action is made out against the respondents and also for non-joinder of necessary party. The Trial Court by its Order dated 7th April 2014, passed below Exhibit-10 had rejected the said application.

Feeling aggrieved by the rejection of application below Exhibit-10, by Order dated 7th April 2014, the respondents had preferred Civil Revision Application No. 37 of 2015 in this Court under Section 115 of Civil Procedure Code. The predecessor of this Court by its Order dated 20th July 2015 has rejected the said Civil Revision Application by a speaking Order. It is held in para No. 9 of the said Order that, the dispute in question is between a member and a member and it does not touch the business of the Society. That in the present dispute neither the Collector nor the Society had any role to play, nor their presence is necessary for deciding the dispute. The dispute is purely of Civil Nature and it does not touch the business of the Society. That the bar under Section 91 of the Maharashtra Co-Operative Societies Act is not attracted and the Civil Court has jurisdiction to entertain and try the present Suit.

4] It is to be noted here that, before this Court decide the said Revision Application, the Trial Court had framed issues below Exhibit-25 on 5th September 2014. The said issues are as under :

- “1. Whether deceased Dattatraya Khandekar had given suit property to the defendant for a temporary occupation (gratuitous occupation) without creating any rights ?*
- 2. Whether deceased Dattatraya Khandekar and plaintiffs by way of the agreement dtd. 16.07.1989 had given suit property to the defendant intended to creating tenancy rights ?*
- 3. Whether defendant had made construction over the suit property by his own cost ?*
- 4. Whether suit is not tenable due to non-joinder of necessary parties ?*
- 5. Whether suit is barred due to Maharashtra Co-Operative Societies Act ?*
- 6. Are plaintiffs entitle for the possession and mesne profits ?*
- 7. Are plaintiffs entitle for injunction ?*
- 8. What Order and decree ?”*

5] The record further indicates that, after decision in Civil Revision Application No. 37 of 2015 dated 20th July 2015, the petitioners/plaintiffs filed an application under Order 14 Rule 5 of the Code, below Exhibit-48 on 14th July 2016, for deletion of aforestated issue Nos.2, 4 and 5. The said application was filed in view of the aforestated observations made by this Court in its Order dated 20th July 2015. The Trial Court by its impugned Order dated 14th June 2017 has partly allowed the said application and has directed to recast issue No.2. The recasted issue No.2 as per impugned Order dated 14th February 2007 is reproduced as under.

“2. Whether deceased Dattatraya Khandekar and the plaintiffs by way of the agreement dated. 16.07.1989 had given the suit property to the defendant ?”

6] A perusal of Order dated 20th July 2015 passed by this Court would clearly indicate that, the predecessor-in-title of this Court after perusing the entire material available on record, has recorded the findings which are narrated in the forgoing sub-paragraph No.3. The Order dated 20th July 2015 passed in Revision Application No. 27 of 2015 holds the field even as of today. The observations made therein and the finding recorded thereof is having binding effect in subsequent litigation arising out of the same suit i.e. Special Civil Suit No. 127 of 2013.

7] As noted earlier, this Court has held that, neither the Collector nor the Society had any role to play, nor their presence is necessary for deciding the dispute involved in the present suit. The suit is purely of Civil Nature and does not touch the business of the Society.

In view thereof, the issues at Sr.Nos. 4 and 5 framed by the Trial Court below Exhibit-25 are redundant and it is necessary to strike out those issues from record, which is accordingly being done.

In view thereof, impugned Order dated 14th June 2017 passed below Exhibit-48 is quashed and set-aside to the extent of not allowing the application of the petitioners for deleting of issue Nos.4 and 5.

In view of the above, issue Nos.4 and 5 framed below Exhibit-25 are struck out and deleted from record.

8] Petition is allowed in the aforestated terms.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn

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