

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6343 OF 2020

1. Uttam s/o. Bhanudas Jarhad,
Age : 47 years, Occ. Agri./Mukadam,
r/o. Kolher, Tq. Georai,
Dist. Beed
2. Vilas s/o. Kantilal Jogdand,
Age : 60 years, Occ. Agri.,
r/o. Devibabhalgaon,
Tq. and Dist. Beed
3. Bankatswami Maharaj Khajgi
Dharmik Public Trust, Pandharpur,
Through its Trustee,
Shri Hanumant s/o. Vinayak Patil,
Age : 64 years, Occ. Agri.,
r/o. Palsingan,
Tq. and Dist. Beed ..Petitioners

Vs.

1. Aniket s/o. Radheshamji Attal,
Age : 32 years, Occ. Business,
r/o. Main Road, Georai,
Tq. Georai, Dist. Beed
2. The State of Maharashtra,
Through : The Collector, Beed
3. The Assistant Charity Commissioner,
Pune
4. Bhaskar s/o. Navnath Mete,
Age : 37 years, Occ. Agri.,
r/o Kolher, Tq. Georai,
Dist. Beed ..Respondents

Mr.V.D.Salunke, Advocate for petitioners
Mr.G.K.Naik-Thigale, Advocate for respondent no.1
Mr.S.N.Morampalle, AGP for respondent no.2

CORAM : R.G. AVACHAT, J.
RESERVED ON : MARCH 10, 2021
PRONOUNCED ON : MAY 06, 2021

ORDER :-

The challenge in this Writ Petition is to the order dated 30.01.2020 passed by the Court of 5th Joint Civil Judge, Senior Division, Beed, on applications below Exhibits 31 and 43 in suit, being Regular Civil Suit No.481 of 2019. By the impugned order, both the applications moved by petitioner no.1 (defendant no.5) came to be rejected.

2. The application below Exhibit 31 was moved for framing of a preliminary issue as to want of territorial jurisdiction to entertain the suit. The application below Exhibit 43 was moved for rejection of the plaint and/or disposal of the suit on account of having become infructuous for the reasons given in the application.

3. It has been averred in the plaint that the land, Gut No.54 (Old Survey No.27), originally belonged to the great-grandfather of respondent no.1 (plaintiff). The suit land came to his share in the partition. He has been in possession of the suit land. The revenue record of the suit land, however, stands in the name of the petitioners. The revenue entries are false and non-est. It has been falsely shown that the suit land has been gifted to petitioner no.3 (defendant no.3). There is no registered gift-deed. The suit land came to be shown as trust property vide order dated 14.11.1964 passed in Change Report Case No.263 of 1963. The Change Report came to be accepted without following the mandatory procedure provided under the Bombay Public Trust Act. Respondent no.1 did not have a notice of the said proceedings, etc.

4. Heard. Perused the plaint in R.C.S. No.481 of 2018 and related documents.

5. Mr.Salunke, learned counsel for the petitioners, would submit that the plaint was liable to be rejected. The suit

is not maintainable for the relief of setting aside the decision in Change Report No.263 of 1963. The title of respondent no.1 to the suit land has been confirmed during the implementation of the scheme of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. In view of Section 36-A of the said Act, the Civil Court has no jurisdiction to settle, decide or deal with any question, which, by or under said Act, are required to be settled or decided, or dealt with by the State Government or any authority. Learned counsel would further submit that the suit land was situated within the territorial limits of the Court of Civil Judge at Georai. No relief has been asked for against the State of Maharashtra or any of its authorities. The State of Maharashtra and learned Assistant Charity Commissioner have been made parties to the suit so as to enable respondent no.1 to file the suit in the Court at Beed. The plaint is, therefore, liable to be returned for being presented in the Court having territorial jurisdiction to entertain the same. According to learned counsel, the trial Court ought to have allowed both the applications.

6. Mr.Thigale, learned counsel for respondent no.1, would, on the other hand, submit that the jurisdiction of the Civil Court is to be ascertained from the averments in the plaint. It is a suit for declaration of title to the suit land and consequential relief of perpetual injunction. The plaint is, therefore, not liable to be rejected. Learned Assistant Charity Commissioner has been made party to the suit. It is the Court of Civil Judge, Senior Division, which is competent to decide the suit against the State or its officials. Learned counsel has relied on the judgment of the Apex Court in the case of **Dhulabhai Vs. State of M.P., 1969 Mh.L.J. 1.** Learned counsel supported the impugned order.

7. Respondent no.1 filed the R.C.S.No.481 of 2019 with the following main reliefs :-

B) The plaintiff be declared as owner and possessor of suit land, bearing Survey No.27(old), Gut No.54, situated at village Kolher, Tq. Georai, Dist. Beed, admeasuring 35 Acres 05 R, assessed for Rs.30.86 Ps., as fully described in para no.1 of the plaint;

C) Decree of perpetual injunction restraining defendant nos.3 to 6 permanently from obstructing the lawful and peaceful possession of the plaintiff over the suit land;

D) It may be declared that the entry in the name of "Shri Sansthan Bankatswami", in the revenue records of survey no.27(old), Gut No.54, situated at village Kolher, Tq. Georai, Dist. Beed, admeasuring 35 acres 05 R, assessed for Rs.30.86.Ps., be declared as null, void and illegal and as such is not binding on the plaintiff;

E) It may be declared that the order passed by Ld. Asstt. Charity Commissioner, Pune, dt.14.11.1964 in Change Report No.263/1963 and order dated 15-12-1978 in Change Report No.677/1978 holding that the suit land is the property of Trust, is null and void-ab-initio, without jurisdiction and illegal and as such ineffective to the rights, title, ownership and possession of the plaintiff over the suit land.

8. Respondent no.1 – plaintiff claimed title to the suit land. Consequential relief of perpetual injunction has also been asked for. The application below Exhibit 43 was titled as under :-

सी. पी. सी. चे कलम 151 प्रमाणे व ऑर्डर 7 रूल 11, ऑर्डर 12 रूल 6, ऑर्डर 15 रूल 1 आणि 3, ऑर्डर 23 रूल 1, ऑर्डर 6 रूल 16 व इव्हिडन्स ॲक्ट गॅझीट नुसार ॲब्युझ ऑफ प्रोसेस *Abuse of Process of the Court* नुसार वादीचा दावा हा *Infructuous Ex-debi to justice* नुसार अर्ज.

9. The averments in the application below Exhibit 43 are in the nature of questions of facts. For rejection of the plaint, the averments in the plaint only have to be looked into. In my view, none of the grounds mentioned in clauses (a) to (f) of Order VI Rule 11 of the Code of Civil Procedure ("C.P.C", for short) have been made out for rejection of the plaint or disposal of the suit on the ground of having become infructuous. The trial Court has, therefore, rightly rejected the application below Exhibit 43.

10. The suit is basically for declaration of respondent no.1/plaintiff's title to the suit land. As per Section 15 of C.P.C., every suit shall be instituted in the Court of the lowest grade competent to try it. By virtue of Section 16 of C.P.C., subject to pecuniary or other limitations prescribed by any law,

the suit for recovery of immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. In view of the said provision, the suit ought to have been instituted in the Court of Civil Judge, Junior Division, Georai. Admittedly, no prayer has been made against the State of Maharashtra or the Assistant Charity Commissioner, Pune i.e. original defendant nos.1 and 2 (respondent nos.2 and 3 herein). In paragraph 14 of the plaint, it has been averred as under :-

"14.

.....

.....

The said stray entry in Khasara Patrak in respect of suit land on basis of alleged Gift without any authentic order by competent authority or mutation entry does not defeat, divest or vanish their title and ownership of the suit land. Their title having been clouded due to the said wrongful acts of defendants of grabbing sugarcane crop in the month of December, 2018 as aforesaid, the plaintiff is required to claim declaration of ownership in respect of suit land and perpetual injunction for confirmation and protection of his possession over the suit land. The said entry being void-ab-initio without

substratum of legal right is sought to be got rid of by claiming such declaration. The State of Maharashtra is therefore, arrayed as formal party to this suit."

11. Since no relief has been asked for against original defendant nos.1 and 2 (respondent nos.2 and 3 herein) i.e. State of Maharashtra and the Assistant Charity Commissioner, they have not marked their appearance in the suit. The suit is, therefore, directed to be proceeded *ex-parte* against them.

12. In the case of **Savitri Devi Vs. District Judge, Gorakhpur, 1999 DGLS (SC) 201**, it has been observed thus :-

14. Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for

impleading them as parties in the Special Leave Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under [Article 226](#) of the Constitution of India or Special Leave Petitions under [Article 138](#) of the Constitution of India was stopped. We are strongly deprecating such a practice.

In the case of **Jagatnarayansingh Swarupsingh Chithere and ors. Vs. Swarupsingh Education Society and anr., 1980 Bom.C.R. 837**, it has been held that Deputy or Assistant Charity Commissioner enjoined with statutory obligation of holding enquiry under Section 22 of Bombay Public Trust Act, has to proceed with it judicially.

13. According to me, respondent no.1 – plaintiff may independently prove that the entries in the revenue record are non-est. He may also prove that the decision rendered by the

Assistant Charity Commissioner in Change Report No.263 of 1963 is non-est. The Court seized with the suit may call for Record and Proceedings of those cases. If required, witnesses may be examined in proof of the same. Neither the State of Maharashtra nor its officials nor Assistant Charity Commissioner are necessary or proper parties to the suit. The Court may at any stage of the proceedings, either upon or without application of either party, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out.

14. The trial Court has simply observed as under:-

28] It is not disputed that the defendant no.3 to 6 reside at Georai and property is also situated at Georai. Bu, it is to be noted that on perusal of plaint, it reveals that the plaintiff has made party to the State and Ld. Assistant Charity Commissioner as defendant no.1 and respectively. Therefore, it reveals that this Court has jurisdiction to decide the relief of declaration..... "

15. The trial Court ought to have struck out defendant nos.1 and 2 from the array of the plaint and should have

returned the plaint for being presented in the Court in which the suit should have been instituted.

16. In view of the above, the Writ Petition succeeds partly. The Writ Petition is, therefore, allowed in terms of the following order :-

(i) The impugned order dated 30.01.2020 passed by the Court of 5th Joint Civil Judge, Senior Division, Beed, on application below Exhibit 31 in Regular Civil Suit No.481 of 2019, is hereby set aside.

(ii) The trial Court is directed to struck out the names of the respondent nos.2 and 3 (original defendant nos.1 and 2) from array of the plaint and return the plaint to respondent no.1 (plaintiff) for being presented in the Court in which the suit should have been instituted.

[R.G. AVACHAT, J.]

KBP