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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4192 OF 2022

Appa Kisan Mule

PETITIONER

VERSUS

Bhagaji Patilba Mule (Died) LRs

RESPONDENTS

.....

Mr. Pravin N. Kalani, Advocate for the petitioner

Mrs. P. V. Langhe, Advocate for respondents No.1A and 1B

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th SEPTEMBER, 2022

ORDER :

1. Being aggrieved by the order passed by 14th Joint Civil Judge, Junior Division, Aurangabad, below Exhibit-49 in Regular Civil Suit No. 1213 of 2012, the petitioner has filed present writ petition under Article 227 of the Constitution of India.
2. The petitioner is the original defendant in Regular Civil Suit No. 1213 of 2012. The suit is filed by the plaintiff for declaration that sale deed of the suit property, dated 22nd July, 2011 is false and fabricated and, therefore, is not binding on the plaintiff. Relief of perpetual injunction, not to disturb peaceful possession of the plaintiff over the suit property is also claimed.

3. By order passed on Exhibit-1, on 19th March, 2015, the Trial Court has observed that "*Considering this aspect both the parties are directed to argue whether this court have pecuniary jurisdiction to try and entertain present case or not?*". Thereafter, the suit has proceeded further, issues are framed and the plaintiff has filed his evidence affidavit.

4. After 8 months of plaintiff filing evidence affidavit, application Exhibit-49 is filed by the petitioner-defendant claiming that the preliminary issue regarding pecuniary jurisdiction, which is already framed, may be decided first. The said application was opposed by the plaintiff. The Trial Court has rejected the said application. Hence, the present writ petition.

5. Heard learned advocate for the petitioner and learned advocate for the respondents.

6. Learned advocate for the petitioner submits that once the preliminary issue is framed, the Trial Court ought not to have rejected the application filed by the defendant. In support of his submissions, he placed reliance on -

a. "*Rajan Dhansukhlal Vora V/s Dinesh Bacchubhai Parekh and Others*" 2012 (1) Mh.L.J. 696

b. "*Pravin Pandurang Patil V/s Executive Engineer, Pradhan Mantri*

Gram Sadak Yojana” 2013 (1) Mh.L.J. 800

c. *“Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd., V/s Jagruti Industries and Another” 2008 (4) Mh.L.J. 471*

He, therefore, submits that the impugned order is liable to be quashed and set aside, by allowing the writ petition.

7. Learned advocate for the respondents, on the other hand, supported the impugned order. By relying on the Maharashtra amendment of Civil Procedure Code, she submits that in view of deletion of section 9A of the CPC, the preliminary issue cannot be decided first and it has to be decided along with the other issues, framed in the suit. She further submits that the defendant is trying to prolong the matter as after 8 months of filing of evidence affidavit, the present application is filed and the same is rightly rejected by the Trial Court. By relying on ***"Manskhilal Depar Khimashiq V/s Ramshankar Kalikaprasad Mali and Others" 2916 SCC Online Bom 3604*** she submits that there is no substance in the writ petition and the same is liable to be dismissed.

8. Learned advocate for the respondents is justified in submitting that in view of deletion of section 9A by way of Maharashtra Amendment from the Civil Procedure Code, the

preliminary issue cannot be decided first and the same has to be decided along with other issues.

9. The record indicates that the order of framing preliminary issue was passed on 19th March, 2015, thereafter other issues were framed and the plaintiff has filed his evidence affidavit and, thereafter, after 8 months, the present application is filed by the petitioner – defendant. It is, therefore, clear that the defendant is trying to prolong the matter, by filing said application.

10. All the decisions relied on by the learned advocate for the petitioner are rendered prior to the deletion of section 9A by Maharashtra Amendment, therefore, they would not further the case of the petitioner.

11. Learned advocate for the respondents was justified in placing reliance on "***Salamkayala Veeraghavyya V/s Vallurupalli Krishna Prasad and Others***" ***LAWS (APH) 1959-10-37***, wherein it is held that no separate court fee is to be paid for the ancillary reliefs claimed in the suit.

12. Considering the prayers made in the plaint, the main relief claimed by the plaintiff is of declaration that sale deed is bogus and is not binding on the plaintiff, the relief of perpetual injunction, therefore, can be terms as ancillary relief.

13. In that view of the matter, there is no substance in the present writ petition. The Trial Court has rightly rejected the application filed by the petitioner, in the facts of the present case.

14. No illegality or perversity is found in the impugned order passed by the Trial Court to exercise extraordinary writ jurisdiction. Writ petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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