

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6299 OF 2022**

Mr. Shahid Ahmmed Shamiullah

Ansari and Ors.

....Petitioners

V/s.

Mr. Mohammad Hassan Malbari

and anr.

....Respondents

Mr. Pradeep J. Thorat i/by. Ms. Aditi S. Naikare, Advocate
for the petitioners.

Mr. Rupesh Geete i/by. Satyaki Law Associates, Advocate
for the respondents no.1 and 2.

CORAM : SANDEEP K. SHINDE, J.

Order Reserved on : 26th September, 2022.

Order Pronounced on : 19th October, 2022.

P.C. :

1. This petition under Article 227 of the Constitution of India, questions the legality of order dated 17th December, 2021

by which the Principal District Judge, Thane in exercise of powers under Section 24 of the Civil Procedure Code transferred Regular Civil Suit No. 683/2013 from the Court of Civil Judge Junior Division, Bhiwandi to the Link Court of Civil Judge, Senior Division, Bhiwandi.

Brief facts of the case are as under :

2. Respondent's Special Civil Suit No. 485/2005 claiming declaration and injunction against the petitioners, and State Government and its Officers is pending before the Link Court of Civil Judge Senior Division, Bhiwandi. Although, the said suit is plainly, for declaration and injunction but since the State Government and its Officers are parties thereto, it came to be instituted in the Court of Civil Judge Senior Division, Bhiwandi. In any case, pending said suit, the petitioners herein filed Regular Civil Suit No. 683/2013 in the Court of Civil Judge Junior Division, Bhiwandi against the respondents for declaration and injunction in respect of the property, which is the subject matter of Special Civil Suit No. 485/2005. In the suit instituted by the petitioners, pleadings are yet to complete; but in the Suit No. 485/2005, parties have led evidence. Thus, to be stated that both, the plaintiffs and defendants are seeking declaration and injunction against each other in respect of one property. In consideration of these facts to avoid overlapping evidence and possible

diverse findings, the respondents requested the Principal District Judge, Thane to transfer Regular Civil Suit No. 683/2013 to the Link Court of Civil Judge Senior Division, Bhiwandi and try the same with Special Civil Suit No. 485/2005 instituted by them. The learned trial Court in exercise of jurisdiction under Section 24 of the Civil Procedure Code, granted the application and transferred Regular Civil Suit No. 683/2013 to the Court of Civil Judge Senior Division, Bhiwandi. Feeling aggrieved by that order, plaintiffs in R.C.S. No. 683/2013 have invoked supervisory jurisdiction of this Court.

3. Heard learned Counsel for the parties.

4. Having regard to the facts of the case, in my view, the order impugned calls for no interference. Reason being, the suit property and the parties to both the suits are same and therefore to avoid overlapping evidence and possible diverse findings, the learned Principal District Judge has rightly granted the application moved by the respondents.

5. In consideration of these facts, though I am not interfering in the impugned order, it would be appropriate if the suit instituted by the petitioners i.e. Regular Civil Suit No. 683/2013 is treated as a counter claim in Special Civil Suit No. 485/200. The learned Counsel appearing for the parties, have no objection, if the Regular Civil Suit No. 683/2013 filed by the

19.10.2022

petitioners is treated and registered as counter-claim in Special Civil Suit No. 485/2005 . As such, learned Civil Judge Senior Division shall decide Special Civil Suit No. 485/2005 and counter claim (i.e. RCS No. 683/2013) therein, in accordance with law.

6. The petition is disposed of in the aforesaid terms.

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2022.10.19
18:28:20 +0530

(SANDEEP K. SHINDE, J.)