

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.6792 OF 2019

Mr. Shankarlal Gopalji Bhanushali

..Petitioner

Versus

Mr. Dhansukh Haridas Nanda

..Respondent

Ms. Gauri Godse, for the Petitioner.

Mr. P. S. Dani, Senior Advocate i/by Onam Hingorani, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

PC.

1. Impugned in the petition is an order dated 7th January, 2019 passed by 6th Joint Civil Judge Senior Division, Thane in Special Civil Suit No.27 of 2011 which is for specific performance of oral agreement.

2. Application Exh.58 is taken out by petitioner/plaintiff under the provisions of Order XIV Rule 1 seeking framing of issue, based on the judgment delivered in earlier suit being Regular Civil Suit No.40 of 2008 decreed on 15th April, 2013. Said judgment is confirmed upto Apex Court. It is claimed that same will operate *res judicata* in the present suit i.e. in Special Suit No.27 of 2011. Such prayer is allowed partly to the extent of suit claim in RCS No.40 of 2008. As such feeling aggrieved, this petition is preferred questioning the part rejection.

3. Ms. Gauri Godse, learned counsel for the petitioner would urge that the total claim in suit is to the tune of 9058.13 sq.mtrs. According to her, in earlier suit, an injunction based on title and possession is granted in relation to 3532.13 sq.ft. of land. However, the pleadings in plaint in said RCS No.40 of 2008 are concerned, including that of respondent/plaintiff in the present suit, so also respective written statements, it is quite apparent that the Trial Court has proceeded to consider the claim of the rival parties in relation to the entire property i.e. 9058.13 sq.mtrs. and same are restricted to 3532.13 sq.mtrs. As such, according to her, judgment delivered in earlier suit being RCS No.40 of 2008 delivered on 15th April, 2013 shall operate as *res judicata*. According to her, in view of the aforesaid submissions, which leads to the only inference involved on issue of *res judicata*, the Court below ought to have permitted framing of issue in accordance with Rule 1 of Order XIV of the CPC. She would urge that Court below as such has committed an error, which warrants interference.

4. Mr. P. S. Dani, learned senior counsel appearing for the respondent/plaintiff in Suit No.27 of 2011 for specific performance would support the order impugned. According to him, even if the pleadings of the rival parties are appreciated, the only inference at this stage the Court can notice that the claim in the earlier suit i.e. RCS No.40 of 2008 that too simplicitor injunction in relation to 3532.13 sq.mtrs. That being so, the considerations and the issue which fell for consideration in the present suit are altogether

different than the one in the earlier suit i.e. RCS No.40 of 2008. As such, he has sought dismissal.

5. With the assistance of the respective counsels, I have perused the issues which are decided by the Civil Court in Regular Civil Suit No.40 of 2008. The suit property referred to in the claim in suit is restricted to 3532.13 sq.mtrs., in which the present petitioner was plaintiff whereas in the present suit petitioner is defendant. Even if the total property in relation to which the parties are agitating in the suit of 2008 and present suit is 9058.13 sq.mtrs. The issue involved in the earlier suit i.e. RCS No.40 of 2008 is in relation to the ownership of the petitioner/defendant to the present suit in relation to suit property i.e. 3532.13 sq.mfts. As such, Civil Court recorded finding in relation to the property 3532.13 sq.mtrs. in suit being Suit No.40 of 2008 in relation to the injunction is granted.

6. As far as the claim in Special Civil Suit No.27 of 2011 is concerned, the issues framed at Exh.28 on 7th January, 2019 are appreciated by the Civil Court. In view of scheme of Order XIV, the Court while dealing with claim put forth by the petitioner vide Exh.58 reassessed the pleadings and based on requirement of Sub-Rule 1 of Order XIV of the CPC assessed order of reframing of same. I have gone through the said issues carefully. It appears that for the justifiable reasons, the Court below has proceeded to reframe the existing issue and deleted issue No.5 and reframed the same in

relation to considering the claim of *res judicata* to the extent of issue No.2 at Exh.30 in RCS No.40 of 2008. In the backdrop of findings recorded herein-above particularly in regard to the nature and scope of order impugned adjudicated by the Civil Court in RCS No.40 of 2008, in my opinion, the Court below was justified in passing the impugned order.

7. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out, as the impugned order is in tune with the requirement of Sub Rule 1 of Order XIV of the CPC.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]