

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11239 OF 2022

Shivaji Devram Mhaske

.... Petitioner

Versus

Bhimrao Vithal Mhaske
and others

.... Respondents

.....

Mr. Amol K. Gawali, Advocate for Petitioner

Ms. M.A. Kulkarni, Advocate, for Respondents Nos. 1 to 6

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th September , 2023

ORDER :

1. Petitioner is aggrieved by order passed by learned 8th Joint Civil Judge, Ahmednagar, below Exhibit-38 in Regular Civil Suit No.591 of 2019, thereby rejecting the application filed by petitioner/plaintiff for clubbing Regular Civil Suit No.591 of 2019 and Regular Civil Suit No.203 of 2018.

2. Regular Civil Suit No.203 of 2018 is filed by respondent Nos.7 and 8, seeking a relief of partition in suit property i.e. Survey No.125/4B and declaration. In the said suit, order passed by Collector dated 19/04/2018 is also challenged by a prayer that said decision is not binding on plaintiffs.

3. Regular Civil Suit No.591 of 2019 is filed by petitioner and respondent Nos.9 and 10 in respect of the same suit property i.e. Survey No.125/4B, seeking a relief that 75 R land out of suit property be declared to be owned by plaintiff and defendant Nos.7 and 8. A relief of permanent injunction is also sought. In alternate, a prayer is made that if it is held that there was no partition between parties then, suit property be partitioned, and plaintiff and defendant Nos.7 and 8 be given half share.

4. In these facts, petitioner moved application Exhibit-38, seeking clubbing of both the suits together as the suit property is same and parties in the earlier suit are also parties to the subsequent suit. This application is rejected by the Trial Court holding that, though both the suits are filed in respect of same subject matter, the facts on the basis of which the parties are claiming rights over the properties are different, therefore, the Trial Court held that neither the suit can be clubbed nor evidence can be recorded separately.

5. Heard learned advocate for petitioner and learned advocate for respondent Nos.1 to 6. Perused writ petition memo, annexures thereto and impugned order.

6. Learned advocate for respondents vehemently opposed the prayer in the writ petition contending that, the facts on the basis of which the parties are claiming rights over the properties are different. The State Government is not party to the subsequent suit i.e. Regular Civil Suit No.591 of 2019, and therefore, suits are not liable to be clubbed together.

7. On perusal of record, it is evident that suit property is same. In both the suits, partitioned is claimed. Though it is a fact that in earlier suit, State Government is party, and the order passed by Collector is also challenged, that itself does not mean that the suits cannot be clubbed together.

8. Admittedly, both the suits are pending in the same Court. Considering the pleadings of the parties, so as to avoid different decisions, it is desirable in the interest of justice to club both the suits together. Hence, the following order:

ORDER

- (I) The writ petition is allowed
- (II) Impugned order dated 30/09/2022 passed by learned 8TH Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-38 in Regular Civil Suit No.591 of 2019 is hereby quashed and set aside.

- III) Application Exhibit-38 is allowed.
- IV) Regular Civil Suit No.591 of 2019 and Regular Civil Suit No.203 of 2018 are clubbed together.
- (V) The Trial Court Shall record evidence separately in both the suits and decide both the suits simultaneously.

9. At this stage, learned advocate for respondents prays for stay to this order. For the reasons stated in this order, prayer is rejected.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane