

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

MISCELLANEOUS CIVIL APPLICATION NO.331 OF 2021

**DNYANESHWAR VIJAY KOLPE (MINOR) THROUGH HER
NEXT FRIEND VAISHALI VIJAY KOLPE AND OTHERS
VERSUS
RABHAJI RAKHMA KOLPE AND OTHERS**

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Advocate for Applicants : Mr. R. L. Kute
Advocate for Respondent Nos.1 to 7 : Mr. S. K. Shinde

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 09/03/2023.**

P. C. :

1. The applicants are seeking transfer of RCS No.134 of 2017 and Darkhast No.1 of 2019, pending before 3rd Jt. Civil Judge (Junior Division), Kopergaon to the Court of learned Judicial Magistrate (First Class), Sangamner for clubbing the same with Criminal Miscellaneous Application No.930 of 2018 and Criminal Miscellaneous Application No.931 of 2018 pending therein.

2. According to the applicants, applicant No.3 got married with present respondent No.3 on 01/06/2010. However, the present respondents filed bogus and nominal suit bearing RCS No.273 of 2015 for partition of joint family properties amongst them only to deprive the present applicants from getting any share in the ancestral joint family properties i.e. the suit properties in that suit. The respondents also got decree in the said suit. On getting information of the same, the applicants filed RCS No.134 of 2017

against all the respondents for partition and separate possession of their share in the suit properties and also for declaring the decree in RCS No. 273 of 2015 being null and void in the court of Civil Judge (Junior Division), Kopargaon. It is contended by the applicants that they also filed an application Exhibit-25 for getting interim maintenance of Rs.10,000/- per month from respondent No.3 in the said suit. The learned Civil Judge (Junior Division), Kopargaon by allowing the said application, directed respondent No.3 to pay Rs.10,000/- per month to the applicants. It is contended by the applicants that they have filed Cr.M.A. No. 930 of 2018 for getting maintenance under Section 125 of Cr.P.C. and Cr.M.A. No. 931 of 2018 under the provisions of PWDV Act in the court of learned JMFC, Sangamner. The respondents then challenged the order dated 07/07/2018 before this Court in Writ Petition No.11255 of 2018, wherein this court granted concession to respondent No.3 to pay monthly maintenance @ Rs.7,000/- per month instead of Rs.10,000/- from November, 2018. Since respondent No.3 could not deposit the monthly maintenance @ Rs.7,000/- regularly, the applicants were constrained to file recovery proceeding i.e. Regular Darkhast No.1 of 2019 in the same court at Kopargaon. Thus, the applicants are claiming transfer of the proceedings as aforesaid.

3. On the contrary, the respondents strongly opposed the application by filing an affidavit in reply and thereby contended that RCS No.134 of 2017 is not filed for any matrimonial relief but it was for getting share in the immovable properties of joint family

and therefore, considering the jurisdictional aspect, it cannot be transferred.

4. Heard rival submissions and also perused documents on record.

5. Admittedly, by filing RCS No.134 of 2017, the applicants are claiming share in the joint family properties, which are admittedly situated within the jurisdiction of the learned 3rd Jt. Civil Judge (Junior Division), Kopargaon. Further, it appears that Regular Darkhast No.1 of 2019 is also pending in the court at Kopargaon since it is arising out of the order passed in the said suit. It is not disputed that the applicants have also filed Cr.M.A. No. 930 of 2018 for getting maintenance under Section 125 of Cr.P.C. and Cr.M.A. No. 931 of 2018 under provisions of PWDV Act, which are pending in the court of the learned JMFC, Sangamner. However, it is extremely important to note that RCS No.134 of 2017 is filed by the applicants long back and in between, there was also proceeding filed by respondent No.3 in this court challenging the quantum of maintenance granted in the said suit. It appears that, applicant No.3 being the wife of respondent No.3 is taking active part in the proceeding before Kopargaon Court and this Court. Even though she has filed certain proceedings at Sangamner as aforesaid, wherein the respondents have appeared, but it is extremely important to note that RCS No.134 of 2017 filed by the applicants, is in respect of the immovable properties situated at village Kolpewadi, Taluka : Kopargaon, District Ahmednagar, which comes under the jurisdiction of the learned 3rd Jt. Civil Judge (Junior

Division), Kopargaon. Further, RCS No. 273 of 2015 was also filed in Kopargaon Court by the respondents earlier in respect of the same properties and the decree in the said suit has been challenged by the applicants in their subsequent suit i.e. RCS No.134 of 2017. Since the suit filed by the applicant is pending since long and considering the requirement of filing such suit in the court of having proper jurisdiction to entertain the same, it is not advisable to transfer the same to the court which is not having jurisdiction in respect of the suit properties. Such, transfer may cause so many complications if the said suit is allowed and execution thereof is undertaken. The learned counsel for the applicants despite having sufficient opportunities, could not point out any legal pronouncement to substantiate the jurisdictional aspect in this matter. Further, it appears that distance between Kopargaon and Sangamner is around 50 Kms only and therefore, also there is no inconvenience to the applicants on that ground. In view of the same, I am of not inclined to grant transfer of the aforesaid suit and the recovery proceedings as claimed by the applicants. Hence, following order is passed :

ORDER

The miscellaneous civil application stands rejected and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)