

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10364 OF 2019

Pradip Krishna Jadhav

.. Petitioner

Versus

Aditi Anil More and Ors.

.. Respondents

.....

- Mr. Dnyaneshwar J. Deshmukh, Advocate for Petitioner.
- Ms. Manvi Sharma i/by Mr. Harshad Sathe, Advocate for Respondent No.2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2023.

P.C.:

1. Heard Mr. Deshmukh, Advocate for the Petitioner and Ms. Sharma, learned Advocate for Respondent No.2 for some time.

2. Perused the impugned order dated 18.09.2018 passed below Exhibit-35 in Regular Civil Suit No.17 of 2016 and the record of the case.

3. Admittedly, Petitioner's brother filed a substantive Regular Civil Suit No.1 of 2015 for seeking ownership of the entire suit property which is a larger area including the suit property which is the subject matter of the suit in Regular Civil Suit No.17 of 2016.

4. Application below Exhibit-35 has been filed by the Petitioner in Regular Civil Suit No.17 of 2016 seeking impleadment. The suit has been filed only for removal of encroachment made by some of the

Defendants over the lands of the Plaintiff.

5. The learned Trial Court after perusing the plaint and the written statement as also the subject matter of the property involved in the present suit, *inter alia*, pertaining to encroachment and comparing the same with the subject matter of Regular Civil Suit No.1 of 2015, held that the ownership over the entire land of Survey No.119/1B/1 has been claimed by the brother of the Petitioner on the basis that it is ancestral belonging to them. The subject matter of the property in the present suit of which encroachment is claimed is part and parcel of the subject matter of the suit property in Regular Civil Suit No.1 of 2015.

6. In that view of the matter, the learned Trial Court held that in the event if the Petitioner be allowed to be impleaded in the present suit, the issue of encroachment would not only have to be decided, but the issue of declaration would have also to be resolved and therefore the scope of the present suit would be expanded. In that view of the matter, the learned Trial Court returned a finding that any decision passed in the present suit pertaining to encroachment of the suit property would not affect the proceedings in Regular Civil Suit No.1 of 2015 considering that the reliefs were entirely different but with respect to the same property.

7. It further held that the issue in dispute in the present suit is also directly and substantially in issue in Regular Civil Suit No.1 of 2015 filed between the same parties. I do not find any reason to interfere with the reasoned order. The order dated 18.09.2018 does not call for any interference and is sustained.

8. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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