

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10749 OF 2022

Smt. Gunwantiben Bhagwandas Parmar & Ors.Petitioners
V/S
The State of Maharashtra & Anr.Respondents

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Mr. Ashok M. Saraogi for the Petitioners.
Mr. P.P. Pujari, AGP for Respondent No.1-State.
Mr. Maulik K. Tanna a/w Ms. Disha Dave for Respondent Nos.3 to 9.

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CORAM: SANDEEP V. MARNE, J.
DATE : 23 JANUARY 2023.

P.C.:

1 This Petition is filed assailing the order dated 8 July 2022 passed by the Bombay City Civil Court in Transfer Application No.43 of 2022. By that order, the City Civil Court has proceeded to reject Transfer Application filed by Petitioners. By Transfer Application No.43 of 2022, Petitioners had sought clubbing of S.C. Suit Nos.813 of 2019, 810 of 2021 and 1420 of 2021.

2 To decide the issue about clubbing, It would be appropriate to this Court to consider the exact reliefs in each of three suits. SC Suit No.813 of 2019 has been instituted by Petitioners seeking enforcement of family arrangement executed between the parties in the form of arrangement dated 15 March 2018. SC Suit No.810 of 2021 has been filed by Petitioners

interalia against Brihan Mumbai Electricity Supply & Transport Undertaking (BEST) seeking a declaration that transfer of electricity meters in respect of Room Nos.6, 9 and 12 is bad in law. SC Suit No.1420 of 2021 has been instituted by Respondent No.7 herein against the sole defendant being Respondent No.10-the Designated Officer of Municipal Corporation of Greater Mumbai (MCGM) challenging notice issued under section 354-A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as 'MMC Act' for short) alleging unauthorized construction.

3 In SC Suit No.1420 of 2021 Petitioners filed Chamber Summons seeking impleadment which came to be rejected. The order of the City Civil Court rejecting the Chamber Summons was assailed before this Court in Writ Petition No.5605 of 2021. While seeking withdrawal of Writ Petition No.5605 of 2021, Petitioners were granted liberty to apply before the City Civil Court for clubbing of the pending suits. It is in pursuance of such liberty granted by this Court that Transfer Application No.43 of 2022 came to be filed by Petitioners before the Principal Judge of the City Civil Court. By order dated 8 July 2022 passed by the City Civil Court, the Transfer Application has been rejected.

4 Appearing for the Petitioners Mr. Saraogi, the learned Counsel would submit that any orders would be passed in SC Suit No.1420 of 2021

instituted by Respondent No.6 herein, would adversely affect the rights of Petitioners in SC Suit No.813 of 2019 which is filed for seeking enforcement of family arrangement in respect of Room Nos.6, 9 and 12. He would further submit that Respondent No.6 is putting up additional construction in place of said Room Nos.6, 9 and 12. It is submitted that if the nature of the property is permitted to be altered, it would be difficult for the Court to determine what was the nature of the original property and what change has occurred in the form of new construction. Lastly, Mr. Saraogi would submit that the relief sought in all the three suits are interconnected with each other and therefore, this is a fit case where the Principal Judge ought to have allowed the Transfer Application for clubbing of three suits.

5 Per contra Mr. Tanna, the learned Counsel appearing for Respondent Nos.3 to 9 would oppose the Petition and support the order passed by the City Civil Court. He would submit that not only reliefs sought are in all the three suits are distinct, the parties thereof are also different.

6 After hearing the learned Counsel appearing for the parties, it is clear that the parties to the three suits are entirely different. The first suit being SC Suit No.813 of 2019 has been filed by the Petitioners for enforcement of family arrangement against his family members. The second suit bearing SC Suit No.810 of 2021 has been filed by Petitioners challenging transfer of

electricity connections. The suit is essentially filed against the BEST Undertaking, which is not a party to SC Suit No.813 of 2019 or SC Suit No.1420 of 2021. The third suit being SC Suit No.1420 of 2021 is instituted by Respondent No.6 herein challenging notice issued by the Respondent-MCGM under the provisions of 354A of the MMC Act. Petitioners' Application for seeking impleadment to the said suit has already been rejected. The Writ Petition challenging the said order of rejection has been withdrawn by the Petitioners before this Court. Even though liberty was granted to Petitioners to seek clubbing of the pending suits, the fact remains that the Petitioners having been kept out of SC Suit No.1420 of 2021 by declining the relief of impleadment, cannot seek indirect entry into the same.

7 As observed above, the three suits have been filed for distinct reliefs. The parties in the three suits are also different. Petitioners are not even parties to SC Suit No.1420 of 2021 and it is incomprehensible as to how they can seek clubbing of SC Suit No.1420 of 2021 with the other two suits instituted by them.

8 The Writ Petition is devoid of merits and the same is dismissed without any order as to costs.

9 Mr. Saraogi, learned Counsel submit that the Applications filed by the Petitioners in SC Suit Nos.813 of 2019 and 810 of 2021 for temporary injunction are pending and a direction may be given to the City Civil Court for expediting hearing of the said Applications. It is always open for the Petitioners move the City Civil Court with a prayer to expedite the hearing of the pending Applications for grant of temporary injunction.

(SANDEEP V. MARNE, J.)

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