

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1084 OF 2005
WITH
INTERIM APPLICATION NO. 20522 OF 2022

Virupaksha Mahadev Mandir Public Charitable
Trust

.. Petitioner

Versus

Kisan Jagannath Ghate @ Bhopi

.. Respondent

-
- Mr. N.V. Walawalkar, Senior Advocate i/by Mr. Prasad B. Kulkarni for Petitioner
 - Mr. Amol Mhatre a/w Mr. Sameer Mhatre for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 02, 2023

P.C.:

1. Heard Mr. Walawalkar, learned Senior Advocate for Petitioner and Mr. Mhatre, learned Advocate for Respondent.

2. On 19.01.2023, this Court passed the following order:-

'1. Heard Mr. Walawalkar, learned Senior Advocate for Petitioner, and Mr. Mhatre, learned Advocate for Respondent for some time.

*2. Mr. Mhatre would submit that the issue relating to remand of proceeding would be governed by the decision of the Supreme Court in case of **Gurudassing Nawoosing Panjwani**¹.*

3. To that Mr. Walawalkar would submit that there are contrary judgments to show that objections of such nature relating to availability of alternate remedy and remand ought to be taken in the first instance and not at the time of final hearing of the matter after it has been admitted since long.

1 . (2016) 2 Supreme Court Cases 213

4. *That apart, Mr. Walawalkar would submit that after filing of the Writ Petition, Petitioner has filed a Civil Suit in the year 2009 in the appropriate Civil Court of original jurisdiction seeking declaration in respect of the subject matter of property in the writ Petition. He submitted that substantive rights would otherwise be determined in the suit and its decision would ultimately bind the parties as also the authorities. In that view of the matter, he would submit that the Civil Suit would ultimately determine entitlement to the subject property.*

5. *Be that as it may, Mr. Mhatre is directed to take instructions and inform the stage of the Civil Suit on the next date so that this Court would be in a position to pass appropriate orders.*

6. *Stand over to **02nd February, 2023** for passing orders."*

3. Today both the learned Advocates have jointly informed the Court that R.C.S. No. 55 of 2009 is pending on the record and file of the 3rd Joint Civil Judge Junior Division, Panvel wherein issues have been framed on 12.06.2018 by the learned Trial Court. In that view of the matter, it would be appropriate to direct the learned Trial Court to decide the said Suit after taking evidence and in accordance with law. Hence, the following order:-

- (i) Learned Civil Judge Junior Division, Panvel is directed to decide R.C.S. No. 55 of 2009 within a period of six months from today;
- (ii) Mr. Mhatre, learned Advocate for Respondent submitted that certain parties have expired in the interregnum and Applications have been preferred for bringing their legal heirs on record in the said suit. If

any such Applications are preferred and filed, the same shall be disposed of by the learned Trial Court within a period of four weeks from today;

- (iii) All contentions of the parties are expressly kept open;
- (iv) Needless to state that the learned Trial Court shall not be influenced by any observations made in the impugned order.

4. It is clarified that the order and judgment passed in the Civil Suit shall govern the subject RTS proceedings between the parties.

5. As Writ Petition is disposed, Interim Application also stands disposed.

[MILIND N. JADHAV, J.]

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