



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 138/2022

Smt.Anusaya Ghularam Borkar and Ors. Vs. Smt. Tulsa wd/o Gurudas Kamble
and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. R. Bhishikar, Advocate for applicants.
Mr. R. Joshi, Advocate for non applicant nos. 1 to 5.

CORAM : ANIL L. PANSARE, J.

DATE : 14.12.2023

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The legality, correctness and propriety of the order dated 03.08.2022 passed below Exh.-30 in Regular Civil Suit No.207/2017, by learned Jt. Civil Judge Junior Division, Chandrapur, has been questioned. The learned trial Court has rejected the application filed by the applicants-original defendants seeking rejection of the plaint.

3. The facts, necessary to decide the issue involved, are that in the year 2000, one Ghularam Borkar had filed the suit bearing Regular Civil Suit No.122/2000 against one Gurudas Kamble for permanent mandatory and prohibitory injunction. The said suit was filed on the ground that the suit property under question was a single plot purchased jointly by Ghularam and Gurudas. Subsequently, they partitioned the plot by giving access to Ghularam from Southern side of the original plot. This suit came to be decreed in favour of Ghularam and thus Gurudas was

directed to not obstruct Ghularam from approaching his plot and further to remove all obstructions lying on the approach road to his plot. This decree was passed on 07.01.2005.

4. The decree was challenged in Regular Civil Appeal No.169/2005, which came to be dismissed vide order dated 11.10.2013. Subsequent to the judgment passed by the first appellate court, Gurudas expired. The legal representatives of Gurudas (the non applicants/original plaintiffs) intended to challenge the order passed by the first appellate court. However, there occurred delay in filing the second appeal and, therefore, the legal representatives of Gurudas, filed an application seeking condonation of delay in filing the second appeal vide Civil Application No.244/2016. This application came to be rejected vide order dated 16.08.2017. The aforesaid legal representatives have assailed the order before the Hon'ble Supreme Court by filing Special Leave Petition No.33950/2017, which came to be dismissed vide order dated 17.05.2018. In the meantime, the legal representatives of Gurudas-original plaintiffs lodged yet another suit bearing Regular Civil Suit No.207/2017 against the legal representatives of Ghularam (applicants/original defendants) before the trial Court. This suit has been filed seeking relief in the nature of declaration that the decree dated 07.01.2005 passed in Regular Civil Suit No.122/2000 is not binding upon them and further seeking permanent injunction to restrain the present applicants-original defendants from creating any obstruction in the disputed land, which land is/was the approach road viz. subject matter of the previous suit.

5. Learned counsel for the applicants submits that the prayer sought is nothing but challenge to the judgment and decree passed in previous suit, which challenge, the non applicants failed to make out before the first appellate court in the earlier round of litigation and further the challenge failed even before the Supreme Court for the reason that the non applicants could not make out the case to condone the delay. The net result is that the findings of the trial Court in the previous suit has attained finality. Once the said decree has attained finality, the non applicants-original plaintiffs has no cause to file the present suit. Thus, according to him, the suit is barred by law.

6. Learned counsel for the non applicants submits that the subsequent suit was filed on the ground that the decree in the earlier round was obtained by playing fraud and, therefore, the subsequent suit is maintainable.

7. I have gone through the subsequent plaint. There is nothing in the plaint to indicate that the pleadings as regards fraud, as required under Order VI Rule 4 of the Civil Procedure Code, 1908, have been not incorporated. The non applicants-plaintiffs had made an attempt, in the earlier round of litigation, to challenge the judgment passed by the first appellate Court. For some reason, they could not make out a case. Their attempt to get the order of High Court set aside also failed before the Supreme Court and thus the non applicants-plaintiffs were aware that the judgment and decree dated 07.01.2005 passed in Regular Civil Suit No.122/2000 has attained finality. In the circumstances, the

prayer seeking relief in the nature of challenging the said decree is not permissible.

8. In the circumstances, the contention raised by the applicants-original defendants that there was no cause to file the suit, carries substance. Learned trial Court, instead of considering the aforesaid facts, has laboured on the issue of limitation, improper verification of pleadings, etc. and lost sight of the crux of the matter. The non applicants-plaintiffs have thus no cause to file subsequent suit and, therefore, the plaint is barred under Order VII Rule 11(a) of the CPC. The apparent error committed by the trial Court requires correction, resulting into following order.

ORDER

- (i) The civil revision application is allowed.
- (ii) Impugned order dated 03.08.2022, passed below Exh.-30 in Regular Civil Suit No.207/2017, by Joint Civil Judge Junior Division, Chandrapur is quashed and set aside. The application Exh.-30 is allowed, meaning thereby that the plaint stands rejected in terms of Order VII Rule 11(a) of the Civil Procedure Code, 1908.

Rule made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)