



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 110 OF 2023

1. Rajendra s/o. Waman Sonar

2. Sanjay s/o. Waman Sonar

3. Pralhad s/o. Vasudeo Sonar

... PETITIONERS

(Ori. Defendants)

VERSUS

1. Sachin s/o. Arun Ransube

... RESPONDENT

(Ori. Plaintiff)

...

Mr. Amol K. Gawali – Advocate for Petitioners

Mr. S.V. Natu – Advocate for sole Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 24th OCTOBER, 2024

ORDER :

1. Heard learned Counsel for the rival parties.

2. The petitioners who are the original defendants in Special Civil Suit No. 130 of 2021 have preferred this application for challenging the order dated 22.12.2022 passed by learned 3rd Jt. Civil Judge, Senior Division, Ahmednagar (*hereinafter referred to as “the learned Trial Court”*) below Exhibit-55 in the aforesaid suit.

Under the impugned order the learned Trial Court has rejected the application (Exhibit-55) filed by the present petitioners for rejection of the plaint under Order VII Rule 11 of the Civil

Procedure Code.

3. In this application (Exhibit-55) it is contended by the present petitioners/defendants that, they had filed suit bearing Regular Civil Suit No. 564 of 1998 against the defendants mentioned therein for possession and the said suit (*hereinafter referred to as the “earlier suit”*) was decreed on 28.02.2011. Further, the appeal bearing Regular Civil Appeal No. 117 of 2011 filed by the then defendants before the Appellate Court was also dismissed. This Court had also confirmed the said judgment passed in the earlier suit. According to the petitioners/defendants, they filed Regular Darkhast No.167 of 2019 based on the judgment and decree of the earlier suit. However, the present respondent i.e. plaintiff in present Special Civil Suit No.130 of 2021 filed the suit in respect of the same suit property as that of in the earlier suit for causing unnecessary obstruction in the regular darkhast. According to them, the respondent/plaintiff could have filed the application under Order XXI Rule 95 and 97 of the Civil Procedure Code in the aforesaid darkhast itself for claiming his right in the same suit property. On these grounds they claimed rejection of the plaint in the present suit.

4. The respondent/plaintiff vide reply (Exhibit-58) strongly

opposed the application by mentioning that, the suit property in his present suit is different than the suit property of the earlier suit and therefore, his plaint cannot be rejected under Order VII Order 11(d) of the Civil Procedure Code. As such, he prayed for rejection of the application (Exhibit-55).

5. Learned Counsel for the petitioners vehemently argued that, in view of the observation of the Hon'ble Apex Court when the execution of any property is going on or completed then no suit can be filed in respect of the same suit property. He pointed out as to what happened in the earlier suit and the darkhast hereinabove was satisfied. According to him, the judgment debtor in the said darkhast Rajendra Laxman Ransube instigated the present respondent No.1 to file this suit. Shortly, according to him separate suit for same property mentioned in the aforesaid darkhast is not maintainable. In support of his submissions, he also relied on the following judgments :

- (a) Hon'ble Apex Court in the case of **Prasantha Banerji Vs. Pushpa Ashoke Chandani and Ors.**, reported in *AIR 2000 SC 3567(2)*
- (b) Hon'ble Apex Court in the case of **Shreenath and Anr. Vs. Rajesh and Ors.**, reported in *AIR 1998 SC 1827*
- (c) This Court in the case of **Kuber Housing Investment**

and Finance Pvt. Ltd. Vs. TCI Finance Ltd. and Ors.,
reported in *2014(1) Mh.L.J.*

6. On the contrary, learned Counsel for respondent/plaintiff submitted that, the present respondent was not party in the earlier suit. Moreover, the description of the suit properties in both the suits namely earlier suit and the present suit are different and it is also observed by the learned Trial Court. As such, he prayed for dismissal of the application.

7. Heard rival submissions and also perused the documents on record.

8. It is significant to note that, the application (Exhibit-55) is silent in respect of the specific ground under which the plaint is liable to be rejected as per Order VII Rule 11(d) of the Civil Procedure Code. It appears that, the petitioners are relying upon the decisions of the Hon'ble Apex Court as well as this Court as mentioned in the impugned order whereby it is held that, the suit in respect of the same subject matter of the property filed after initiation of execution proceeding by a person which is not party to the decree, is not maintainable. However, the impugned order clearly indicates that, the learned Trial Court has compared the suit properties in the earlier suit as well as present suit by giving

its descriptions in detail. On going through those descriptions it is clearly evident that, the suit properties in both the suits are apparently different. Moreover, the suit property of Rajendra Laxman Ransube has been shown towards western and southern side of the suit property in the present suit. Therefore, the observation of the learned Trial Court that the present petitioners are under obligation to show the suit property in the present suit is similar to the suit property of the earlier suit and for that purpose the evidence is definitely required is absolutely correct. Therefore, at this juncture merely on the contention of the petitioners in application (Exhibit-55) that both the properties namely property in the earlier suit and present suit is one and the same, cannot be considered for rejection of the plaint. Thus, when there is clear finding based on the description of the properties in both the suits that they are different properties, there is no need to discuss the judgments relied upon by the learned Counsel for the petitioners. Thus, no substance is found in the present application and accordingly, it stands dismissed.

9. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]