



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

990 WRIT PETITION NO. 10603 OF 2024

Vilas Aneppa Kharose & others

....Petitioners

VERSUS

Kamalbai Shivdarshan Reddy Aradwad

Through Power of Attorney

Ashok Shivdarshan Reddy Aradwad

.....Respondent

.....

Mr. Y. B. Pathan, Advocate for the Petitioners.

Ms. M. S. Mhase, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 21st NOVEMBER, 2024.

PER COURT :

1. Petitioners takes exception to the order dated 13.08.2024 passed below Exhibit 54 in Regular Civil Suit No. 324/2017 whereby the learned Trial Court rejected the application filed by the Petitioners/original Defendants seeking stay to the suit.

2. It is the case of the Petitioners that Petitioner Nos. 1 and 2 filed suit bearing Regular Civil Suit No. 261/2016 against Defendant No. 2 Kamalbai for specific performance of contract. The subject property in the said suit is area admeasuring 2 Acres and 9 Gunthas being claimed to be in the ownership of Plaintiff No. 1

therein and area of 1 Acre 30 Gunthas to the ownership of Plaintiff No. 2. In the plaint, Plaintiffs therein i.e. Petitioner Nos. 1 and 2 have specifically averred about they being in possession of the suit property. They had sought decree of specific performance of contract so also injunction against Respondents from causing interference in the suit property.

3. The said suit is being heard by the learned Trial Court and evidence of Plaintiffs i.e. Petitioner Nos. 1 and 2 herein is already concluded. It is thereafter Respondents filed suit bearing Regular Civil Suit No. 324/2017 in respect of the said property and injunction is sought against the present Petitioners.

4. In this backdrop, an application Exhibit 54 was moved by the Petitioners in Regular Civil Suit No. 324/2017 under Section 10 of Code of Civil Procedure for stay of the subsequent suit. Learned Trial Court rejected the said application with observations that the suit properties in both the suits are altogether different and reliefs claimed are also not similar.

5. Learned counsel for Petitioners has drawn attention of this Court to the suit properties in both the suits which, according to him, indicate that the suit properties in both the suits are same. It is his submission that the learned Trial Court has committed error in not considering the said fact in proper perspective. It is his further submission that Petitioner Nos. 1 and 2 in the earlier suit have claimed possession of the suit property and sought injunction against the Respondents and in such circumstances, present case is duly covered by Section 10 of the Code of Civil Procedure.

6. Learned counsel for the Respondents opposed the Petition firstly on the ground that the subject matter in both the suits differs. In order to support said submission, she has drawn attention of the Court to the suit property described in Regular Civil Suit No. 261/2016 filed by Petitioners and Regular Civil Suit No. 324/2017 filed by contesting Respondents. According to her, the boundaries of the suit properties described in both the suits indicate that suit properties are different and as such not the same subject matters. Apart from this, it is contended by learned counsel for the Respondents that perusal of plaint in Regular Civil Suit No. 261/20016 indicates that essentially the same has been for

redemption of mortgage and the issues involved in both the suits are entirely different. To support her submissions, he has placed reliance on judgments of Hon'ble Supreme Court in case of Aspi Jal and Another vs. Khushroo Rustom Dadyburjor, **AIR 2013 Supreme Court 1712** and Vallabh Das vs. Dr. Madanlal and others, **AIR 1970 Supreme Court 987**.

7. In order to appreciate contention of the Petitioners, it is necessary to consider the pleadings in both the suits. On the face of it, record indicates that Plaintiff Nos. 1 and 2 in Regular Civil Suit No. 261/2016 have claimed area of 2 Acres 9 Gunthas and 1 Acre and 30 Gunthas respectively from survey No. 99A situated at Ramling Mudgad, Tq. Nilanga, Dist. Latur. There is specific pleading in the plaint that pursuant to the agreement between Plaintiffs and Defendant No. 1, Plaintiffs were put in possession of the suit property. In this backdrop, relief of injunction is also sought along with decree of specific performance. Perusal of the suit bearing Regular Civil Suit No. 324/2017 though indicates that the suit is filed in respect of an area admeasuring 1 Acre 60 R land from Survey No. 99A, as rightly pointed out by learned counsel for the Petitioners that the total area held by Plaintiffs in the previous suit is the same

as sought to be included in the subject matter by the subsequent suit. Though in the subsequent suit, sons of Petitioner Nos. 1 and 2 are joined as party defendants, there is no allegation against them of any right being created in their favour. Pertinently, in this suit, Plaintiff simply claims injunction, without disclosing the source of her title in the suit property.

8. Though there is no dispute about the fact that the suit filed by Petitioners is in the nature of redemption of mortgage, however, at the same time, Petitioners claim to be in possession of the suit property and seek injunction against Respondents as well as Defendant No. 1 in the suit. As against this, perusal of plaint filed in Regular Civil Suit No. 324/2017 does not indicate as to the documents on the basis of which the Plaintiffs therein seek possession of any particular part of the suit property. As against this, there is specific allegation made by the Petitioners in their suit that Defendant No. 1 has sold the suit property to Defendant No. 2. These averments are more than sufficient at this stage to indicate that the subject matter of both the suits qua relief of injunction is same. Similarly, there is no specific allegation against Defendant Nos. 3 and 4 about any independent right, interest being created in their

favour. Thus, there is reason to believe that these Defendants are claiming through and on behalf of Respondent Nos. 1 and 2 i.e. Petitioner Nos. 1 and 2 herein.

9. In the light of these facts, the observations made by learned Trial Court that the suit properties are altogether different is not sustainable. On the face of it, both the suits involve the same suit property. The relief of injunction in second suit is also same as both the parties are seeking injunction against each other in respect of same property only. It would be relevant to refer to Section 10 of Code of Civil Procedure which reads thus :-

Section 10 - Stay of suit :

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1[India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1[India] established or continued by 2[the Central Government] 3[***] and having like jurisdiction, or before 4[the Supreme Court].

Explanation.-The pendency of a suit in a foreign Court does not preclude the Courts in 1[India] from trying a suit founded on the same cause of action.

Perusal of the said provision indicates that there is clear embargo created to proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in the previously instituted suit between the same parties or between the parties under whom they or any of them claim litigating under the same title.

10. As far as judgments cited (supra), Hon'ble Supreme Court in case of Vallabh Das(supra) was concerned with the fact that one of the suits was filed for partition whereas the other suit was for possession of suit property from trespasser. The facts of present case totally differ to exclude application of this judgment to the present case. Similarly, in case of Aspi Jal and another (supra), it is held by Hon'ble Supreme Court that the test for applicability of Section 10 of Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res judicata in the subsequent suit. In fact, this observation completely would apply to

the present case as the issue of possession and injunction decided in the suit filed by Petitioners would certainly operate res judicata.

11. From above discussion, it is thus clear that the Trial Court has committed serious error in not appreciating the facts on record so also the provisions of Section 10 of Code of Civil Procedure. As a result, the impugned order cannot sustain. Petition stands allowed. Regular Civil Suit No. 324/2017 stands stayed till decision of Regular Civil Suit No. 261/2016.

(R. M. JOSHI)
Judge

dyb