

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8944 OF 2022

Suresh Mahadev Kadam

.. Petitioner

Versus

Sandeep Pandurang Dighe & Ors.

.. Respondents

WITH

WRIT PETITION NO. 13093 OF 2022

Pandurang Baburao Dighe & Ors.

.. Petitioners

Versus

Sandeep Pandurang Dighe & Ors.

.. Respondents

.....

- Dr. Uday Warunjikar i/by Mr. Sumit S. Kate for Petitioners
- Mr. Sagar Kursija a/w Mr. H.D. Chavan i/by T.D. Deshmukh for Respondents

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2024

P. C.:

1. Heard Dr. Warunjikar, learned Advocate for Petitioners and Mr. Kursija, learned Advocate for Respondents.

2. The order impugned in the present Writ Petitions is a common order passed in Application below Exhs. 5 and 31 which is dated 18.08.2021. It is at Exh. I, page No. 70-86 of the Petition. It is passed in RCS No. 737/2021. Paragraph No. 1 of the suit plaint describes the suit properties. There are in all 24 suit properties which are subdivided into 9 groups i.e. Group A to Group I. Claim in the plaint by the Plaintiff is entitlement to 1/7th share in the 24 properties on the

premise that all 24 properties are ancestral properties. Defendants who are Petitioners before me filed written statement and made a categorical averment in paragraph No. 10 that 2 out of 24 properties are ancestral properties whereas the remaining 22 properties have been purchased by Defendants i.e. they are their self acquired properties. Before the order on Exhs. 5 and 31 was passed, Defendants filed a compilation of documents on behalf of Defendant Nos. 1, 2 and 5 to 7 dated 22.07.2021. That compilation of documents lists copies of 20 documents which according to Defendants are copies of registered title deeds / sale deeds in respect of 20 out of the 24 properties.

3. It is contended by Defendants that without undertaking the exercise of confirming whether the subject 24 properties are ancestral properties or self acquired properties on the basis of the aforesaid compilation, the learned Trial Court has passed the impugned order. Reasoning of the learned Trial Court is incidentally contained in two paragraphs of the impugned order i.e. paragraph Nos. 20 and 21. In those paras, there is a mere narration by the learned Trial Court in respect of some of the properties which are mentioned in paragraph No. 1 of the suit plaint by referring to them and opining that when the said properties were purchased, the age of Defendant No. 1 would be 18 years and in view of the fact of he being an agriculturist, the issue

of showing his independent source of income to purchase the said properties was not clarified before the Trial Court. Same submission is in fact advanced by Mr. Kursija before me also when he would contend that all properties, even though they may be standing in the name of Defendant No. 1 or any other contesting Defendant, the source of acquisition of these properties was from the joint family income. If this is the case then the initial burden would be on the Plaintiff to discharge that burden.

4. I have impressed upon both the learned Advocates to show me the reasons given by the learned Trial Court in the impugned order in so far as the aforesaid consideration has been considered by the Trial Court or otherwise. Perusal of paragraph Nos. 20 and 21 shows that the learned Trial Court has not considered the issue of acquisition of these properties on the basis of the documentary evidence furnished by the Defendants as the said properties being their self acquired properties. In that view of the matter, the order dated 18.08.2021 passed by the learned Trial Court on the basis of the reasons given in paragraph Nos. 20 and 21 is unsustainable and deserves interference. The impugned order therefore stands quashed and set aside with a direction to the learned Trial Court to consider the sale deeds / documents of title in respect of the Defendants' properties one by one and the objections of the Plaintiff thereupon and pass a speaking order

if it is concluded that the said properties are either ancestral properties or self acquired properties.

5. Considering the timeline in the present case, the hearing of Exhs. 5 and 31 shall be conducted afresh *qua* each of the 24 properties as appearing in the suit plaint for which injunction has been sought and the same shall be completed within a period of six weeks from today. Parties shall not take any unnecessary adjournments and the learned Trial Court shall give adjournment only if it is utmost necessary.

6. Within one week from today, compilation of documents of all 22/24 properties alleged by Defendants to be self acquired properties shall be furnished before the learned Trial Court. Originals shall also be kept ready at the time of arguments or if not available, shall be accordingly informed to the Trial Court. Copy of the same has already been furnished to the Plaintiff before me. Hence, Plaintiff will have no grievance about non-submission of the same. If the Plaintiff desires, he shall take inspection of the originals from the Defendants within a period of one week from today to ensure that he will not seek further time before the Trial Court after taking inspection of the documents. Statement is made by Dr. Warunjikar on instructions that for a period of six weeks, no third party interest or right shall be created in the 22/24 properties save and except one property which is already sold

to one Mr. Suresh Kadam who is the Petitioner in WP/8944/2022. Mr. Kursija shall take note and notice of the same. Learned Trial Court is requested by this Court to pass a reasoned speaking order on Exhs. 5 and 31 strictly in accordance with law and on the merits of the case after examining the evidence produced which shall be presented by the parties before it.

7. Record shows that the impugned order dated 18.08.2021 was also challenged in Misc. Civil Appeal and the Appeal Court had upheld the said order by its order dated 16.05.2022. In view of the above order, Misc. Civil Appeal does not survive and the learned Trial Court shall now dispose of Exhs. 5 and 31 afresh.

8. It is clarified that this Court has not opined on any of the merits of the matter and it shall be entirely open for both parties to agitate all their contentions which are expressly kept open before the learned Trial Court and the learned Trial Court shall pass a reasoned order strictly in accordance with law.

9. With the above directions, Writ Petition No. 13093 of 2022 is disposed. Writ Petition No. 8944 of 2022 is also disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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