

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11484 OF 2022

Saraswati Manohar alias
Dada Komkar & Anr.

.. Petitioners

Versus

Vasant Pandharinath Komkar
(since deceased) through Legal Heirs /
Representatives
Laxmi Vasant Komkar & Ors.

.. Respondents

-
- Mr. S.C. Wakanakar for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 27, 2024

P. C.:

1. Heard Mr. Wakankar, learned Advocate for Petitioners.
2. Present Petition takes exception to the order dated 23.06.2022 passed in Application below Exh. 133 in SCS No. 1453/2012. The Application is filed by Defendant Nos. 11 and 12 seeking decision on the issue of jurisdiction to be tried as a preliminary issue under O. XIV, R. 2(2) of the CPC.
3. Mr. Wakankar would submit that in terms of the provisions of Rule 2(2) of O. XIV of the CPC, whenever the Court is confronted with issues both of law and of fact which arise out of the same Suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that

issue relates to jurisdiction of the Court. While harping on this provision, he has drawn my attention to the basic facts in the present case. Averments in the Suit, particularly in paragraph No. 2 are to the effect that original Plaintiff Vasant P. Komkar (since deceased) and now represented by his four legal heirs i.e. Respondent Nos. 1A(1) to 1A(4) have contended that he is the statutory tenant of Defendant Nos. 1 to 4 in the suit building. To buttress and support the said averments, Mr. Wakankar has drawn my attention to paragraph No. 16 of the Suit plaint which supports the aforesaid contention and case of the Plaintiff.

4. Mr. Wakankar would submit that the Suit is filed by the tenant for possession and declaration. He would submit that the issue of possession cannot be a question that could arise for the Plaintiff to plead as there is no dispute about their possession. In so far as the issue of declaration is concerned, he would draw my attention to the issues framed by the learned Trial Court which are at Exh. C, page No. 62 of the Writ Petition. Issue No. 1 stands framed as “*Does Plaintiff prove that, he is Tenant in the Suit premises*” and Issue No. 10 is framed as “*Whether this Court has jurisdiction to try the present Suit?*”. He would submit that considering the averments made in the suit plaint and more specifically that the original Plaintiff himself having pleaded that he is a tenant in respect of the suit premises, the

issue of jurisdiction needs to be decided at the outset by applying discretion of the Court under the provisions of Rule 2(2) of O. XIV of the CPC. He would submit that in the present case a negative declaration is sought for by the tenant in respect of the development agreement executed between the owner of the property and Defendant No. 11. In the present case, Defendant Nos. 1 to 5 claim to be the owner of the property whereas Defendant No. 11 is the developer.

5. Learned Trial Court while deciding the Application below Exh. 133 has merely stated that the case has been pending since the last 10 years and that the Court is satisfied that the case would not be disposed of on the issue of law only as raised by the Petitioners in the Application below Exh. 133. I have perused this reasoning. It is merely on apprehension.

6. After hearing Mr. Wakankar on 14.02.2024, this Court directed issuance of notice to the contesting Respondents. Office report shows that the Respondents have been duly served. As per the Bailiff's report, notices have been served on Respondent Nos. 1A(1) to 1A(4). The office report is dated 23.02.2024. Today when the matter is called out, none is representing the contesting Respondents. This Court cannot protract such matters any further due to parties remaining absent.

7. Coming back to the impugned order passed in the Application below Exh. 133, it is seen that the learned Trial Court while exercising its discretion under the provisions of Rule 2(2) of O. XIV has not given any reasons whatsoever. All that the learned Trial Court ought to have seen were the averments in the suit plaint in order to exercise its discretion in deciding the Application below Exh. 133. When it is the Plaintiff's own case that he is a statutory tenant of the suit property in the building belonging to the owner of the property, there could have been no impediment whatsoever to allow Application under Exh. 133 as the reliefs prayed for by the Plaintiff would be essentially through Defendant Nos. 1 to 4 i.e. the owners of the entire property. It is seen that the aforementioned issues i.e. Issue Nos. 1 and 10 are pure questions of law and without assigning any reason the learned Trial Court has stated that the case would not be disposed of on the issue of law itself and there is no need to try the said issue of jurisdiction first cannot be a cogent and valid reason.

8. In view of the specific averments made in the suit plaint, I have no reason to disbelieve as to why the aforementioned two issues on jurisdiction cannot be tried at the outset as preliminary issues. In the specific facts and circumstances of the present case and clear admission by the Plaintiff, I am of the clear opinion that Application below Exh. 133 ought to have been allowed. In that view of the

matter and in view of the above observations and more specifically because of the fact that the Trial Court itself has recorded that the Plaintiff is a tenant of the suit property in paragraph No. 3 of the impugned order, the order dated 23.06.2022 is quashed and set aside. It is directed that the learned Trial Court shall adjudicate issue Nos. 1 and 10 delineated above as preliminary issues after hearing both the sides strictly in accordance with law and as expeditiously as possible and in any event within a period of eight weeks from today. All contentions of both the parties are expressly kept open.

9. With the above directions, Writ Petition is allowed and disposed.

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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