

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14217 OF 2023

~~Mahadeo Anna Jadhav,~~

Deceased through Legal Heirs

Sanjay Mahadeo Jadhav and Ors.

.. Petitioners

Versus

Khanderao Ramchandra Jadhav and Ors.

.. Respondents

WITH

WRIT PETITION NO. 14219 OF 2023

~~Mahadeo Anna Jadhav,~~

Deceased through Legal Heirs

Sanjay Mahadeo Jadhav and Ors.

.. Petitioners

Versus

Khanderao Ramchandra Jadhav and Ors.

.. Respondents

.....

- Mr. Pratap Patil, Advocate for Petitioners.
- Mr. Nikhil Narendra Pawar, Advocate for Respondent Nos.1 to 3.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2024.

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioners and Mr. Pawar, learned Advocate for Respondent Nos.1 to 3.

2. Writ Petition No.14217 of 2023 takes exception to order passed below Exhibit “98” and Writ Petition No.14219 of 2023 takes exception to the order passed below Exhibit “184” both dated 28.08.2023 in Special Civil Suit No.22 of 2014 and Regular Civil Suit No.1 of 2013 respectively.

3. Application below Exhibit “184” sought issuance of witness summons to 10 witnesses namely the plot purchasers in order to prove the location as also factum of possession of the said plots which are the subject matter of the Suit property. Original Suit is filed for declaration, injunction and perpetual injunction. Admittedly registered sale deeds have been executed with various plot purchasers. Though in all there are 129 plot purchasers, purpose of issuance of witness summons to 10 plot purchasers was to establish case of Plaintiffs in the Suit. List of 10 witnesses is appended in the Application at page No.143 below Exhibit “184” in Writ Petition No.14219 of 2023. The said Application was resisted by Respondents on the ground that by order dated 22.02.2022 this Court had allowed withdrawal of the Petition with liberty as prayed for. Mr. Pawar has drawn my attention to Exhibit “M” - page No.114 of Writ Petition No.14219 of 2023 and order dated 22.02.2022. Though it is contended by him that Application below Exhibit “184” would be barred by the principles of *res-judicata* as also the fact that this Court had comprehensively rejected the challenge maintained earlier, it is clearly seen that this Court while allowing the Petition to be withdrawn ought to have given liberty to Petitioners to take out appropriate proceedings, if so permissible and available in law, while rejecting the Application below Exhibit “184”.

4. This is a bunch of two Writ Petitions namely; Writ Petition No.14217 of 2023 and Writ Petition No.14219 of 2023. In first Writ Petition No.14217 of 2023, order under challenge is dated 28.08.2023 passed by the Civil Judge, Senior Division, Islampur below Exhibit “184” in Regular Civil Suit No.1 of 2013. The said order is at Exhibit “BB” - page No.147 of the Writ Petition. Application under Exhibit “184” was filed by Plaintiffs for issuance of witness summons to 10 witnesses whose names and details were stated in the Application. Suit is filed for permanent injunction and declaration. Plaintiffs have pleaded that the original owner of the Suit property sold her land after making plots to several purchasers. Plaintiffs have filed 10 such certified copies of the sale deeds between original owner and the purchasers on record and pleaded that these certified copies are required to be proved by examining the concerned purchasers / vendees so as to ascertain the boundaries of the Suit property as also considering the nature of the Suit prayers to establish the case of the Plaintiffs.

5. Mr. Patil would fairly submit that Plaintiffs had filed an identical Application earlier below Exhibit “133” before the Trial Court. List of witnesses was appended below Exhibit “132”. Learned Trial Court on 19.11.2021 rejected the said Application on merits which was challenged by Plaintiffs before this Court in Writ Petition No.9631 of 2021. When the said Writ Petition was heard by this Court, at that

time Plaintiffs had withdrawn the said Writ Petition and this Court had given an opportunity to Plaintiffs to file an appropriate Application before the Trial Court in accordance with law. He would submit that in view of that liberty the present Application below Exhibit “184” was filed by Plaintiffs. The order this Court reserving such liberty is at page No.114 of the Writ Petition. It reads that on a motion made on instructions on behalf of the Petitioners / Plaintiffs for withdrawal of the Petition, the Petition stands dismissed as withdrawn and Petitioner is at liberty to take out such proceedings as are permissible and available in law.

6. In view of this liberty it is seen that Application below Exhibit “184” is filed. The only resistance of the Applicant before the learned Trial Court is in view of the rejection of Application filed below Exhibit “133” previously and therefore it was submitted that Application would be barred by *res-judicata*. Learned Trial Court after hearing the parties compared the earlier Application to the present Application and opined that the names of witnesses in the earlier Application and the present Application were similar. Learned Trial Court further opined that the present Application is infact similar to the earlier Application and therefore in view of the previous order not having been reversed by this Court, a similar Application was not maintainable. Though it is held in the order that the Plaintiffs were not granted liberty to file such an Application again, liberty is infact

given to file an appropriate Application in accordance with law. It is further held by the learned Trial Court that the present Application is nothing but an attempt to prolong the trial by the Plaintiffs and therefore the Application below Exhibit “184” stood dismissed. Hence, the present Writ Petition.

7. In Writ Petition No.14219 of 2023, the order under challenge dated 28.08.2023 is passed below Exhibit “98” in Special Civil Suit No.22 of 2014. The said order is at Exhibit “CC” - page No.151 of the Writ Petition. The facts in this Writ Petition are identical, save and except that the Plaintiffs had previously filed an identical Application below Exhibit “66”. Writ Petition No.9631 of 2021 referred to in the previous case was filed challenging dismissal of the Application below Exhibit “133” and Exhibit “66” in both the Suits together and hence the facts are identical.

8. Considering the reliefs prayed for in the Suit proceedings are for permanent injunction and declaration, it is the case of the Plaintiffs that the Plaintiffs purchased the undivided portion of the land from the original owner under a registered sale deed dated 28.09.1977. It has been admitted by the Plaintiffs that subsequently there is another registered sale deed dated 10.01.1980 whereby sub division has taken place and in 1988 Suit for perpetual injunction namely Suit No.37 of 1988 was filed by one of the parties and his brother. The said Suit was

dismissed on 03.09.2001 and thereafter series of events took place. It is contended by Plaintiffs that pursuant to the sale deed dated 11.05.2012, Respondent No.1 started construction which disturbed the possession of the Plaintiffs over the land purchased by them from the original owner and therefore the Plaintiffs were compelled to file Regular Civil Suit No.1 of 2012.

9. Two specific Suits have been filed which are the subject matter of impugned orders being heard today. It is seen that subsequently the Plaintiffs plotted the land and entered into a further sale deed with the purchasers / vendees. In all these sale deeds, the boundaries of the land sold to them has been stated. In that view of the matter, in the present Suit the Plaintiffs desire to establish the boundaries of the Suit property by referring and relying upon the registered sale deeds between the parties.

10. Mr. Patil however has argued that certified copies of original sale deeds with the plot purchasers have already been placed on record in Suit proceedings and Plaintiffs seek to refer to and rely upon them in support of their case. Hence the Application was filed below Exhibit “184” for issuance of witness summons to the vendees / purchasers. It is also seen that previously Application was filed below Exhibit “66” by Plaintiffs under Order XII Rule 1 and 2 of the Code of Civil Procedure, 1908 wherein Plaintiffs had specifically relied upon these very sale

deeds. In that Application, Defendants had specifically denied the sale deeds. It is precisely in that view of the matter, Plaintiffs sought to refer to and rely upon the certified copies of the original sale deeds and examine the vendees / purchasers in order to prove execution of the said sale deeds.

11. In view of the above, rejection of Application filed below Exhibit “184” ought not to have been granted merely on the ground that this Court while passing the order dated 22.02.2022 had not reversed that the earlier order of the Trial Court. Though it is true that an earlier order was passed by the learned Trial Court while determining Application under Exhibit “132” and Exhibit “133”, the facts which are pleaded by the Applicant in the Application below Exhibit “184” *qua* the case of the Plaintiffs in the Suit plaint require the Plaintiffs to not only refer but also rely upon the sale deeds. In the present case, Plaintiffs are required to prove the sale deeds by examining vendees / purchasers.

12. Mr. Pawar has expressed an apprehension that the Plaintiffs may make a further Application before the learned Trial Court to examine further witnesses since there are 129 such purchasers of the plots.

13. Mr. Patil would submit that this should not be the apprehension on the part of Defendants as it is for the Plaintiffs to

prove whether the execution of the sale deeds had occurred as also whether the sale of the plots plotted by the Plaintiffs had taken place.

14. In view of the above, the impugned order dated 28.08.2023 in both Writ Petitions are not sustainable and are quashed and set aside. Application below Exhibit “98” as also Application below Exhibit “184” stand allowed. The learned Trial Court shall immediately issue process for witness action considering that the Suit has been filed in the year 2013.

15. The learned Trial Court is directed by this Court to decide the Suit proceedings as expeditiously as possible and in any event within a period of one year from today.

16. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

17. Parties assure this Court that they shall cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

18. All contentions of the parties are expressly kept open before the learned Trial Court.

19. The learned Trial Court shall not be influenced by any observations made in this order and decide the pending Suit strictly in accordance with law.

20. With the above directions, both Writ Petitions are disposed.

[MILIND N. JADHAV, J.]

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