

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15513 OF 2023

Mangala Sonyabapu Jagtap

.. Petitioner

Versus

Maruti Parvat Aher and Ors.

.. Respondents

-
- Mr. Vivekanand Krishnan a/w. Mr. Abhijeet A. Dixit, Advocates for Petitioner.
 - Mr. Ansari Shahed Ali Inayat Ali, Advocate for Respondent No.3.
-

CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2024.

P.C.:

1. Heard Mr. Krishnan, learned Advocate for Petitioner and Mr. Ansari, learned Advocate for Respondent No.3.

2. On 22.03.2024, this Court had passed the following order:-

“1. This Writ Petition is at serial No.40 and is mentioned at the time of rising by Mr. Krishnan.

2. Heard Mr. Krishnan, learned Advocate for Petitioner.

3. The order impugned in the present Writ Petition is passed in an application filed below Exhibit-19 in Regular Civil Suit No.169 of 2021. It is filed on the premise that one of the Defendants namely Defendant no.3 has also instituted a suit for partition and injunction against the present Plaintiff and the other Defendants namely Defendants in Regular Civil Suit No.132 of 2022 which is pending in the Court.

4. The learned Trial Court has considered the pleadings in both the suit proceedings. Various contentions are also advanced regarding suit having been filed to harass the opposite parties. What is required to be seen is whether both the suits are between the same parties, with respect to same cause of action, with respect to the same suit property and more

specifically with respect to pleadings and namely the same reliefs.

5. Learned Trial Court has categorically returned a finding that property mentioned in Regular Civil Suit No.132 of 2021 is different than the subject suit property which is the subject matter of Regular Civil Suit No.169 of 2021. Perusal of the order reveals that both the suits are for effecting partition though relief is also prayed for declaration. The said relief is in nature of seeking partition in equal proportionate shares.

6. In that view of the matter, Mr. Krishnan would submit that both the suits should be tried together for commencing evidence. He would submit that by virtue of the impugned order dated 08.02.2023, the present suit i.e. the subsequent suit has been stayed.

7. An arguable case has been made out by Mr. Krishnan for issuance of notice to Respondents.

8. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents a copy of this order and copy of the Writ Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date.

9. It is clarified that this Writ Petition shall be disposed of on the next adjourned date.

10. Stand over to 10th April, 2024 at 2.30 p.m."

3. On perusing of the impugned order dated 08.02.2023 which is at Exhibit "A" - page No.9 of the Writ Petition passed in Application under Section 10 of the Code of Civil Procedure, 1908, it is clearly seen that Suit property in respect of both the Suits filed are entirely different. Mr. Ansari confirms the said position and more specifically the directions contained in paragraph No.5 of the above order.

4. In that view of the matter, the impugned order dated 08.02.2023 is clearly not sustainable. Hence the said order dated

08.02.2023 is quashed and set aside. However in view of the convenience of the parties and in the interest of justice, it is directed that both the Civil Suits namely RCS No.132 of 2021 and RCS No.169 of 2021 shall be heard by the same Court and shall be tagged together before the same Court. The learned Trial Court shall ensure compliance of these directions. In the event if the parties desire to lead common evidence in both the Suits, concerned Court shall give opportunity to the parties considering that both the Suits are for partition of the Suit property in proportionate shares between the same parties.

5. The learned Trial Court is requested by this Court to dispose of both the Suits as expeditiously as possible and in any event within a period of one year from today strictly in accordance with law.

6. It is clarified that the learned Trial Court shall not be influenced by any observations made in this order as the same are *prima facie* in nature.

7. Both Suits shall be disposed of on its own merits.

8. All contentions of the parties to the Suits are expressly kept open before the learned Trial Court.

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

[MILIND N. JADHAV, J.]

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