

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.781 OF 2023

M/s. Bhushan Kulkarni

Applicant (Orig.
.. Defendant No.2)

Versus

Atul Ashok Korde and Ors.

.. Respondents

.....

- Mr. Mutahhar Khan i./by Mr. Rajesh O. Gupta, Advocate for Applicant.
- Mr. R. M. Pethe, Advocate for Respondent No.1.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 03, 2024

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant (Defendant No.2) and Mr. Pethe, learned Advocate for Respondent No.1 (Plaintiff).

2. The impugned order dated 25.08.2023 passed below Exhibit-52 at page No.198 of the Writ Petition rejects the Application filed by the Applicant (Defendant No.2 in the original suit proceedings) for dismissal of the suit under Order VII Rule 11 (d) of the Civil Procedure Code, 1908. I have heard Mr. Khan at length as also Mr. Pethe in the present Civil Revision Application and perused the order dated 25.08.2023 and pleadings.

3. There is no disagreement or dispute about the fact that the Plaintiff in the suit proceedings allegedly derives the co-parcenary

right in the suit property which according to the Plaintiff himself belongs to his deceased grand-father Mahadeo Kondiba Korde. Admittedly the Plaintiff's father is still alive. Save and except this share of Applicant is not defined nor ascertained.

4. After perusing the impugned order, I expressed my mind to Mr. Pethe that before filing of the present suit proceedings right and share of Plaintiff ought to have been ascertained or determined in the suit property. He would admit that the said right is yet to be ascertained or proclaimed. He would fairly submit that Plaintiff has not sought Partition of his right till date. Hence I have impressed upon him that only after the said right is determined by an appropriate Civil Court the Plaintiff would have any substantive right of maintaining the suit for injunction against the Defendants.

5. However Mr. Pethe would submit that in so far as nexus between original Defendants is concerned, the entire substantive right in the suit property has not been transferred to the Defendant No.2 by the Defendant No.1 to enable Defendant No.2 to file the Application below Exhibit-52. He would submit that suit is filed for injunction only and nothing more and therefore in that view of the matter, being one of the legal heirs of the deceased Mahadeo Kondiba Korde, the Plaintiff has a share in the suit property and is therefore entitled to maintain the suit proceedings.

6. The learned Court while considering the Application below Exhibit-52 has in passing stated that the property is a bundle of rights which the Plaintiff needs to plead and prove in order to get relief in the suit and on this basis rejected the Application. According to the learned Judge, the Plaintiff has pleaded his right in the suit property. It is stated that Plaintiff is in possession of the suit property. However as noted above, Plaintiff may be a co-parcener in the suit property of the original owner Mr. Mahadeo Kondiba Korde, but his right has not been determined or ascertained.

7. In view of this position, the finding returned in paragraph No.9 of the impugned order is not sustainable at all. After perusing the pleadings, I am of the clear opinion that the suit proceedings are nothing but an extortionist attempt of the Plaintiff only when the suit property is now being developed by Defendant No.2. That and only that is the reason and nothing more. Mr. Khan would inform the Court that plans for development of the suit property have been sanctioned by the Planning / Competent Authority and development by Defendant No.2 is stated to begin.

8. Mr. Pethe has been fair to the Court by submitting that the legal right and share of the Plaintiff has not been determined by any Court of law as yet. Hence it shall be open to the Plaintiff to get it established, if so desired.

9. In view of the above, the impugned order and the reasons given in paragraph Nos.8, 9 and 10 for rejecting the Application filed below Exhibit-52 are not sustainable and deserve to be interfered with and set aside. The impugned order dated 25.08.2023 is therefore quashed and set aside. The Application filed below Exhibit-52 stands allowed.

10. Resultantly, the suit plaint filed by the Plaintiff i.e. Respondent No.1 herein stands rejected with costs imposed upon Respondent No.1 of Rs.5,000/- (Rupees Five Thousand Only) to be paid by the Respondent No.1 to the Kirtikar Law Library, High Court, Mumbai.

11. The costs as awarded and directed shall be paid by the Respondent No.1 within a period of four (4) weeks from today and receipt of payment shall be placed on the record of the Revision Application. If the costs are not paid by the Respondent No.1 as directed, then Collector, Pune is directed by this Court to recover the said costs from the Respondent No.1 i.e. the Plaintiff as arrears of land revenue and pay the same to the Kirtikar Law Library, High Court, Mumbai.

12. With the above directions, Civil Revision Application stands allowed and disposed.