

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7550 OF 2024

Sachin Laxman Kamble

.. Petitioner

Versus

Vilas Kisan Ghodke and Ors.

.. Respondents

.....

- Ms. Shradha K. Nakadi i./by Mr. Rupesh K. Bobade, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 31, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Ms. Nakadi, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 31.07.2024 and the Writ Petition.
- 4.** Ms. Nakadi at the outset seeks leave of the Court to annex the order dated 04.07.2013 dismissing the previous Suit No.161 of 1999 filed by Plaintiffs. Copy of the order is tendered across the Bar. It is taken on record and marked 'X' for identification and taken on record. Since she would submit that the Defendants would like to append the said copy as Exhibit to the present Petition, her application is allowed as this is a prehearing amendment. Petitioner is permitted to annex the copy of order dated 04.07.2013 as Exhibit to the Petition

and nothing more. Registry shall permit the same to be done within one week from today. Reverification is dispensed with.

5. The impugned order dated 18.10.2023 passed below Exhibit-82 in Regular Civil Suit No.482 of 2015 deserves to be interfered with. It is contention of Defendant in the Application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short ‘CPC’) that a previous suit filed by Plaintiffs namely Suit bearing Regular Civil Suit No.161 of 1999 for same cause of action which is the subject matter in the present Suit of 2015 was in respect of the same suit property and it was dismissed-in-default on 04.07.2013.

6. Here is a case where Plaintiffs have admittedly suppressed the aforesaid material information from the Court in the present suit plaint and in that view of the matter, finding returned by learned Trial Court in paragraph No.11 of the impugned order passed below Exhibit-82 is not sustainable. Though the learned Trial Court may be right in contending that cause of action for suit for partition may be a recurring cause of action but a party cannot be permitted to file one suit, then abandon it, allow it to be dismissed and not restore it and after a lapse of a few years file a fresh suit for the same cause of action. It is seen from the order dated 04.07.2013 that the previous suit was ready for hearing and Plaintiffs did not adduce any evidence nor Plaintiffs have corrected the valuation for the purpose of which the previous suit was

filed despite a specific order of the Trial Court dated 23.11.2012. Hence the previous suit was rejected under Application filed below Order VII Rule 11(b) of the CPC. If the present suit is allowed to be maintained it would lead to an anomalous situation where a party on its own whim and fancy would approach the Trial Court at any point of time by filing a fresh suit despite the dismissal of the earlier suit by the learned Trial Court. Another ground for seeking dismissal of the suit is in respect of non-description of the suit property, *inter alia*, pertaining to Defendant Nos.15 to 63 in the suit plaint. It is seen that there are 65 Defendants to the suit proceedings.

7. An arguable case has been made out by Ms. Nakadi for issuance of notice to Respondents and stay of the impugned order.

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. The impugned order dated 18.10.2023 is stayed. Proceedings before learned Trial Court shall stand stayed in view of the substantive challenge preferred by the Petitioner in view of the

rejection of Application under Order VII Rule 11 of the CPC.

10. Stand over to **28th August, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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