

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4296 OF 2024

Sushila Ganpati Gilbile & Ors.

.. Petitioners

Versus

Shantadevi Keraba Morwadkar & Ors.

.. Respondents

.....

- Mr. Sagar R. Sonawane i/by Mr. Umesh H. Pawar for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 05, 2024

P. C.:

1. Heard Mr. Sonawane, learned Advocate for Petitioners.
2. Present Writ Petition takes exception to the order dated 05.12.2022 passed by the learned Trial Court in Application below Exh. 35 in RCS No. 74/2018 allowing the amendment Application filed by Respondents (Org. Plaintiffs) under O. VI, Rule 17 of the CPC subject to payment of costs.
3. Briefly stated original Suit is filed by the Plaintiffs seeking a declaration in respect of the suit property being City Survey No. 404 as described in paragraph No. 1 of the Suit plaint. Suit is filed in the year 2018.
4. Amendment Application below Exh. 35 is filed in June 2022 seeking to incorporate pleadings and specific reliefs pertaining to boundary fixation of the suit property, mandatory injunction against

Defendants, appointment of the Court Commissioner to measure the property and for removal of encroachment.

5. Mr. Sonawane would submit that in paragraph No. 2 of the Suit plaint, Plaintiffs have in fact admitted the title of Defendants predecessor-in-title on the basis of the transactional documents, details of which are enumerated therein. He would submit that the predecessor-in-title of Defendants had purchased the suit property from his predecessor-in-title who had in fact purchased it by a registered sale deed as far back as in the year 1965. He would submit that once the Plaintiffs have sought a declaratory relief, the Plaintiffs cannot be allowed to seek any further reliefs in respect of seeking mandatory injunction on the construction being carried out by the Defendants on their property.

6. *Prima facie*, it appears that there appears to be a boundary dispute relating to the question whether any excess property has been sold to the predecessor-in-title of the Defendants. It is also seen that the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act have resulted in recording the names of the Defendants in the revenue record pertaining to the suit property which may lead to the aforesaid discrepancy. If the Plaintiffs succeed in obtaining the declaration as sought for in the original Suit proceedings, the consequential reliefs which have been prayed for in

the amendment Application can easily be allowed by the Competent Authority if any statutory Application is made under the statutory provisions of the Maharashtra Land Revenue Code 1966 or any other allied or incidental law as applicable in respect of the said reliefs. In that view of the matter, the proposed amendment by merely stating that it is necessary to determine the real controversy between the parties and it does not harm or prejudice the Defendants may not be an appropriate reason. That apart what is crucial is the fact whether allowing the said amendment would be necessitated to decide the dispute between the parties or to avoid multiplicity of the proceedings. In that view of the matter, I find that once the Plaintiffs succeed in establishing and declaring their title to the suit property, they can always seek the appropriate consequential reliefs from the statutory Authorities since the declaratory relief precedes the reliefs which are prayed for by the Plaintiffs in the amendment Application.

7. In view of the above, an arguable case is made out by Mr. Sonawane for stay to the impugned order dated 05.12.2022. Hence, the impugned order dated 05.12.2022 is stayed.

8. Issue notice to the Respondents made returnable on 19.04.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents 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 on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners.

9. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remains absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

10. Stand over to 19th April, 2024.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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