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

WRIT PETITION NO. 10840 OF 2024

Kiran Dilip Palange

.. Petitioner

Versus

Nirmala Ganesh Palange and Ors.

.. Respondents

-
- Mr. Bhalchandra Shinde, Advocate for Petitioner.

.....
CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 27, 2024.

P.C.:

- 1.** Heard Mr. Shinde, learned Advocate for Petitioner.
- 2.** The order impugned in the present Writ Petition is dated 03.01.2024 which rejects Application filed by Defendant Nos.1 to 4 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”). Application below Exhibit “141” is filed on 12.01.2023 and decided by the impugned order dated 03.01.2024.
- 3.** Mr. Shinde, learned Advocate for Petitioner, at the outset draws attention of this Court to the contents of paragraph No.12 of the impugned order and would contend that by virtue of the finding returned in paragraph No.12, learned Trial Court has held that it shall not have the jurisdiction to decide the issue of apportionment between the Plaintiffs and Defendants and in that view of the matter, Application made by the Defendants regarding payment of deficit Court fees is not required to be decided. The precursor for the filing of

the present Application are proceedings between the parties which are required to be delineated.

4. Suit No.267 of 2010 is filed by Plaintiffs on 16.10.2010 against Defendants seeking partition of several Suit properties. It appears that even prior to filing of the Suit, acquisition proceedings under the National Highways Act, 1956 in respect of two out of the suit properties was undertaken which ultimately fructified and the Acquiring Body has declared an Award and awarded compensation of Rs.60,88,269/- in favour of the owners who are parties to the Suit proceedings. The amount of Rs.60,88,269/- is deposited by the National Highways Authority on 13.10.2011 in the Suit proceedings regarding the two properties which stand acquired. This is so because, the Suit is for partition.

5. Mr. Shinde would submit that Plaintiffs immediately filed Application below Exhibit “51” seeking a *status quo* order with respect to disbursement of the aforesaid amount which was resisted by Defendant Nos.1 to 4. However, by order dated 17.01.2012 which is appended at page No.44 of the Writ Petition, the Application for *status quo* was allowed by Trial Court and the amount is kept deposited in the Suit account. He would next submit that in view of the above subsequent development, Plaintiffs sought amendment of the Suit proceedings by filing Application below Exhibit “60” under Order VI

Rule 17 of the CPC on 21.02.2013. By order dated 19.08.2013, Application for amendment of Plaintiffs was allowed.

6. The above facts are not in dispute. The grievance of Defendant Nos.1 to 4 is made almost a decade thereafter in the year 2023 when Defendants would plead that once the Plaintiff claims 1/6th share in the amount which has been deposited by the National Highways Authority in the Suit account *qua* entitlement towards her share, then she would have to pay appropriate *ad valorem* Court fee on the said amount. This plea is taken in the Application filed under Order VII Rule 11 of the CPC on 12.01.2023 below Exhibit “141”. The learned Trial Court considered the Application with respect to various properties which are the subject matter of partition proceedings as also the plea of Defendant Nos.1 to 4 regarding disbursement of 1/6th share claimed by Plaintiffs and decided the Application by a detailed speaking order dated 03.01.2024.

7. Mr. Shinde has taken me through the said order and would restrict his submission only with respect to the findings returned in paragraph No.12 of the said order which are referred to and alluded to herein above. He would submit that implication of the contents in paragraph No.12 of the impugned order is such that according to the Trial Court disbursement of the amount of compensation awarded in respect of the twin properties which are acquired in the interregnum is

required to be done by the Acquiring Body under the provisions of National Highways Act and therefore in that context the learned Trial Court has held that it will have not jurisdiction to disburse the aforesaid compensation between the parties. On this ground plea of the Defendants regarding deficit Court fees paid by the Plaintiffs is not decided and Application is rejected.

8. He would next submit that principal Suit between the parties is for partition of the Suit properties. He would submit that in the interregnum twin properties have been acquired and in lieu thereof the compensation of Rs.60,88,269/- stands deposited in the Court. He would submit that finding returned by the learned Trial Court that it would not have jurisdiction and to relegate the parties to the Competent Authority under the National Highways Act for disbursement is not necessary since a substantive Suit for partition of properties belonging to parties is already pending in the Civil Court. All that he would submit is that instead of partitioning the twin properties which now stand acquired, the learned Trial Court will have to determine the shares of the parties in the compensation which stands deposited. He would submit that it is the Plaintiffs' own case which has already been allowed by the learned Trial Court while allowing the Application filed below Exhibit "60", that according to Plaintiff No.1, she is entitled to 1/6th share in the said compensation amount. Equally, if the said Application below Exhibit "60" is seen and

the amendment which has been carried out by the Plaintiffs is seen, it is clear that Plaintiffs' own case is to distribute and disburse the compensation amount to the extent of her 1/6th share as also to the concerned six co-sharers / parties who have a right in the twin properties which stand acquired. Hence, he would submit that once the Application for amendment below Exhibit "60" has being allowed by the learned Trial Court, then the finding returned in paragraph No.12 is completely incoherent that the learned Trial Court will not have jurisdiction to decide the issue of disbursement of compensation amount which stands deposited pursuant to acquisition of the twin properties. Partitioning the Suit property and apportionment of the compensation is the same exercise which is sought for by Plaintiffs and in that view of the matter, it is contention of Defendants that the finding arrived at by the learned Trial Court is incorrect.

9. I have heard Mr. Shinde and perused the pleadings in the case. *Prima facie* on bare perusal of paragraph No.12 it is clearly seen that despite the learned Trial Court having allowed Application below Exhibit "60" and permitted Plaintiffs to make a substantive amendment to seek 1/6th share belonging to Plaintiffs, then in that case the learned Trial Court cannot say that it does not have jurisdiction to decide the said issue. There is a Competent Authority established under the National Highways Act for disbursement of compensation in accordance with law. However, it is seen that the same Authority has

deposited the cheque of Rs.60,88,269/- as far back as on 13.10.2011 in the Trial Court for the purpose of disbursement between the parties according to their share since the partition Suit is pending before the Trial Court. The power of the Trial Court is extremely wide in so far as determination of partition Suit pending between the parties is concerned.

10. I see no reason as to why the learned Trial Court has come to a conclusion that it will not disburse the said amount which has been deposited by the Competent Authority under the National Highways Act. The Civil Court will have the power to distribute and disburse the said amount strictly in accordance with law depending on the share of the parties as proved by the parties in the Partition Suit proceedings. In the present case, Petitioner – Plaintiff No.1 has herself sought equitable distribution of the deposited amount which is in consonance with the Plaintiffs’ principal case in the Suit filed by Plaintiffs seeking partition of several properties.

11. In that view of the matter, finding arrived at in paragraph No.12 of the impugned order that the Civil Court will not have jurisdiction to decide the issue is completely misconceived and unacceptable and therefore the finding arrived at in paragraph No.12 of the impugned order is quashed and set aside.

12. In view of the above order, the learned Trial Court is directed by this Court to decide the plea of Defendant Nos.1 to 4 regarding payment of deficit Court fees strictly in accordance with law.

13. It is the contention of Defendants that since Plaintiff No.1 has sought 1/6th share in the compensation amount which has been deposited in the Trial Court, the learned Trial Court shall decide the Application below Exhibit “141” to the above extent in accordance with law as also consider the issue of jurisdiction of the Court because of the claim being above Rs.5,00,000/-.

14. In that regard, the Court of Civil Judge Junior Division shall take an appropriate decision after hearing all parties in accordance with law.

15. However while doing so, the learned Trial Court is directed by this Court to ensure that Plaintiffs are heard in the matter and all objections of the parties are considered before passing a speaking order.

16. With the above directions, except paragraph No.12, rest of the order dated 03.01.2024 is retained as no fault can be found in the rest of the order in so far as determination of Court fees with respect to the other properties is concerned.

17. Writ Petition stands partly allowed by the above order and disposed.

[MILIND N. JADHAV, J.]

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