



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CIVIL REVISION APPLICATION NO. 81 OF 2024

APPLICANT : Jaisingh Vinayaksingh Gaharwar
(Gawalpanchi), Aged 51 Years, Occ.
Business, R/o. Opp. Akola Urban
Bank, Ganjward, Chandrapur, Tah. &
Dist. Chandrapur.
(Original Defendant No.2 in Reg.
Civil Suit No.26 of 2017)

//VERSUS//

RESPONDENTS : 1. Sundersingh Vinayaksingh Gaharwar
(Gawalpanchi), Aged 55 Years, Occ.
Business, R/o. Opp. Akola Urban
Bank, Ganjward, Chandrapur.
(Original Plaintiff in Reg. Civil Suit
No.26 of 2017).

2. Executive Engineer, Maharashtra
State Electricity Distribution
Company Limited (MSEDCL), Old
Power House Colony, Ballarpur, Tah.
Ballarpur, Dist. Chandrapur.
(Original Defendant No.1 in Reg.
Civil Suit No.26 of 2017).

Mr. Parth Ranade, Advocate for the Applicant.
Mr. S.V. Purohit, Advocate with Mr. P.V. Bawankule, Advocate
for Respondent No.2.

CORAM : G. A. SANAP, J.
DATED : 12th JULY, 2024.

ORAL JUDGMENT

. Heard finally with the consent of learned advocates for the parties.

02] **ADMIT.**

03] In this revision application, challenge is to the order dated 10th July, 2023, passed by the Principal District Judge, Chandrapur, whereby the learned Judge rejected the application made by the applicant, who is the defendant No.2 in the suit, for transfer of Regular Civil Suit No.26/2017 from the Court of learned Civil Judge (Junior Division), Ballarpur to the Court of learned Civil Judge (Junior Division), Chandrapur.

04] In the application, the applicant has narrated the history of litigation between him and his brother, respondent No.1. It is stated that before filing this suit, near about three suits between the parties are pending in the Civil Court at Chandrapur. It is stated that Regular Civil Suit No.253/2021 and Regular Civil Suit No.114/2018 are filed by respondent No.1 seeking a decree of permanent injunction. In these suits, it is the principal contention of the respondent No.1 that he is the co-owner of the suit property and therefore the applicant/defendant No.2 cannot deal with and

dispose of the property. The suit in question i.e. Regular Civil Suit No.26/2017 has been filed seeking a decree of declaration. In this suit, the declaration has been sought that the electric meter installed on the application of the applicant by respondent No.2 was illegal.

05] It is the case of the applicant/defendant No.2 that the suits filed by respondent No.1 are based on the principal contention that he is the joint owner of the property and the applicant/defendant No.2 shall not dispose of the same behind his back. It is stated that since the main contention is with regard to the joint ownership by respondent No.1, it is necessary for proper adjudication of all the suits, to transfer the Regular Civil Suit No.26/2017 from the Court of Civil Judge (Junior Division), Ballarpur to the Court of Civil Judge (Junior Division), Chandrapur. The respondents opposed the application before the learned Principal District Judge. The reply was filed by respondent No.1 only. On behalf of respondent No.2, the application was argued without filing reply.

06] I have heard learned advocates for the parties. Perused the record and proceedings.

07] Learned advocate for the applicant/defendant No.2 would submit that, since all the suits are based on the principal allegation of right by respondent No.1 in the property as a joint owner, all the suits are required to be tried before the same Court to avoid the multiplicity of the proceeding as well as contradictory findings on the same issue. Learned advocate would submit that the learned Principal District Judge has not properly addressed all these issues.

08] Respondent No.1 has failed to appear before this Court. Learned advocate for respondent No.2 would submit that as the principal relief has been claimed against respondent No.2 in the suit, respondent No.2 would be required to carry all the documents to the Court at Chandrapur. The office of respondent No.2 is situated at Ballarpur.

09] On going through the record and the order passed by the learned Principal District Judge, Chandrapur, it is evident that the learned Principal District Judge has not properly addressed the issue raised by the applicant/defendant No.2. Applicant and respondent No.1 are brothers. There is a dispute between them with regard to the suit property. The respondent No.1 is claiming

joint ownership in the property. According to him, the applicant has no right to deal with and dispose of the property. Two suits filed by him seeking a decree of permanent injunction are pending in the Court of Civil Judge (Junior Division) at Chandrapur.

10] Perusal of the plaints in those suits would show that those suits are based on the principal contention of respondent No.1 that he is the joint owner of the property and therefore the applicant has no right to dispose of the same or deal with the same. It is seen that Regular Civil Suit No.26/2017 has been filed after installation of the electric meter in the premises, on the application of the applicant by respondent No.2. According to respondent No.1, the installation of electric meter without his consent was illegal. He has prayed for decree of declaration on that count. His principal contention in this suit is that he is the joint owner of the property and the applicant/defendant No.2 unilaterally had no authority to apply for installation of electric meter. In my view, considering the nature of the right claimed in the property in all the suits, the learned Principal District Judge ought to have allowed the transfer of this suit to Chandrapur.

11] It is undisputed that the distance between Ballarpur and Chandrapur is 18 km. In view of this, the grievance of likely inconvenience sought to be placed on record by the learned advocate for respondent No.2 may not be of any significance. In my view, for the proper adjudication of Regular Civil Suit No.26/2017 and to avoid the repetition of the same evidence and contradictory findings, it would be just and proper to allow the transfer application. Hence, the following order:

ORDER

- i] The Revision Application is **allowed**.
- ii] The impugned order dated 10th July, 2023, passed by the learned Principal District Judge, Chandrapur, is set aside.
- iii] The Misc. Civil Application No.136/2022 is allowed.
- iv] Regular Civil Suit No.26/2017 be transferred from the Court of learned Civil Judge (Junior Division), Ballarpur to the Court of learned Civil Judge (Junior Division), Chandrapur.
- v] Learned Principal District Judge, Chandrapur, while assigning this suit on its transfer, shall ensure that this suit is assigned to the Court where Regular Civil Suit No.253/2021 is pending.

vi] The Revision Application stands disposed of in the above terms.

(G. A. SANAP, J.)

Vijay