



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1901 OF 2024

Manisha Dadasaheb Kadam
VERSUS
Bhagwan Babarao Shinde And Others

- Mr. G. A. Gadhe, Advocate for the Petitioner
- Mr. N. K. Chaudhari, Advocate for the Respondent Nos. 1, 2 and 4

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 26, 2025

PER COURT :

1. This Petition takes exception to the order passed below Exh. 40 dated 02.01.2024 in RCS No. 164/2021 whereby the application filed by the Respondent No. 4 under Order I, Rule 10 of the Code of Civil Procedure came to be allowed.

2. The facts which led to the filing of this Petition can be narrated in brief as under:

The present Petitioner is Plaintiff who filed suit being RCS No. 164/2021 against Respondent Nos. 1 to 3 with averment that they are obstructing the possession of Plaintiff and injunction is sought against them. Respondent No. 4 is father of the

Plaintiff. Plaintiff claims that he executed a registered gift deed in her favour in respect of the suit property. Respondent No. 2 is a nephew of the Respondent No. 4 and he filed application Exh. 40 to join Respondent No. 4 as Defendant to the suit through Respondent No. 2 as a next friend. The Petition further reveals that Respondent No. 2 filed suit being RCS No. 45/2017 as a next friend of Respondent No. 4 i.e., father of the Petitioner herein for seeking declaration that gift deed executed in her favour to be invalid. In the said proceeding, Respondent No. 2 filed Exh. 5 application which came to be rejected and the said order was confirmed by this Court in Writ Petition No. 590/2022. Petitioner has grievance that the Respondent No. 4 is not necessary party as there is only injunction is sought against Defendant Nos. 1 to 3.

3. Learned Counsel for the Petitioner submits that the issue of the validity of the gift deed executed by Respondent No. 4 in favour of Petitioner is subject matter of RCS No. 45/2017 and that no declaration is sought by the Petitioner in RCS No. 164/2021. He drew attention of the Court to the

pleadings in the plaint to argue that there is specific allegation against the Defendants causing obstruction to the peaceful possession of the Plaintiff over the suit property and that there is no allegation against added Defendant.

4. None appeared for Respondent No. 3 though served. This indicates that this Respondent has no inclination to oppose the Petition.

5. Learned Counsel for the Respondent Nos. 1, 2 and 4 opposes the said contention by raising grievance that if any declaration is given in RCS No. 164/2021 in respect of validity of the gift deed, such order would directly affect the interest of Respondent No. 4. It is his submission by relying upon the judgment of Coordinate Bench of this Court in case of Ashok vs. State of Maharashtra and Others, 2022 SCC OnLine Bom 3670, that by wise pleadings it cannot be permitted to the plaintiff to file suit and seek relief which is against the person, without joining him as Defendant.

6. Perusal of the judgment in case of Ashok (supra) shows that it was a case wherein the suit for

injunction is filed in respect of the property belonging to the Trust without making Trust and trustees as parties. In such circumstances, this Court has made observations in paragraph nos. 13 to 15, which reads thus:

13. From the averments of the plaint, it is clear that the plaintiff had full knowledge of registration of the trust and also of the fact that the trust and its trustees were claiming right, title and interest in the property and were filing applications for taking over possession of the same. Despite acquisition of this knowledge, he appears to have deliberately arrayed only revenue and police officials as defendants to the suit. Admittedly, the original eight defendants (revenue and police officials) are not claiming any right, title or interest in the suit property, nor are seeking to dispossess plaintiff in pursuance of any right claimed by the Government in the suit property. They are concerned either with maintenance of revenue entries or may assist in execution of lawful orders passed by the Courts and the authorities.

14. The question that arises is why the plaintiff chose to file suit only against the Government officials despite having full knowledge of rights being claimed by the trust and the trustees in the suit properties? The action appears to be deliberate one so as to secure a decree of perpetual injunction behind the back of the

persons/trust claiming interest in the property. The suit appears to have been cleverly drafted by intentionally avoiding to implead the trust or its trustees. The Revenue and Police officials may not seriously contest plaintiff's suit for lack of any lis between them and plaintiff. Plaintiff cannot be permitted to seek decree against persons not claiming any rights in the suit property and then possibly use it to protect his possession by relying upon the same before the revenue and police officials. The trial court has filled in the gap by directing addition of Respondent Nos. 9 and 10 after being satisfied that their present is necessary for deciding the issues effectively.

15. No doubt, the suit is for injunction simplicitor and the order of injunction would not be binding on respondent Nos. 9 and 10, if they were not to be added as party defendants. Mr. Gangakhedkar has strenuously submitted that the decree passed in the suit would not be binding on respondent Nos. 9 and 10, who can have their own remedies open against the plaintiff for claiming their own right, title or interest. In my opinion, this course of action would only result in multiplicity of proceedings. The course of action suggested by Mr. Gangakhekar would result in trial of plaintiff's suit in absence of Respondent Nos. 9 and 10 and then filing of another suit by Respondent Nos. 9 and 10 to claim their own rights. The Trial Court, in my opinion, has correctly avoided this situation by adding Respondent Nos. 9 and 10 to plaintiff's

suit so that the competing claims of both the sides would be decided in one proceedings.

7. In contrast, in the instant case, there is a suit filed being RCS No. 45/2017 which is first in time seeking declaration with regard to the validity of the gift deed executed by the Petitioner's father in her favour. Needless to say that since the said suit is pending, even otherwise it is not open for the Court in the subsequent suit filed by the Petitioner to go into the said issue and record any findings thereon.

8. Perusal of the record indicates that this is a suit for simplicitor injunction with specific averment that the Defendants are causing obstruction to the peaceful possession of the Plaintiff over the suit property. As there is no other declaration sought, there is no substance in the grievance sought to be made out by the Counsel for Respondent No. 4. The principle of *dominus litus* would certainly apply to the present case and the Plaintiff cannot be compelled to join someone as Defendant, if no any relief is sought or otherwise the presence of such person is not

necessary for the effective decision of the suit. In the application filed before the Trial Court, it is not the case of the Respondent No. 2 in the capacity of next friend of Respondent No. 4 that his presence is necessary for the proper and effective decision of the suit.

9. Having regard to these facts, this Court is of the view that the Trial Court has ignored material factual aspect in the matter and has mechanically allowed the application. This has led to passing of order unsustainable in law. Hence, Petition deserves to be allowed and the same is accordingly allowed. Application Exh. 40 filed in RCS No. 164/2021 stands dismissed.

(R. M. JOSHI, J.)