



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7756 OF 2014

1. Madhukar Dagadu Tikande
Aged 68 years, Occu- agricultural,
2. Rukmini Dhondiba Tikande,
Aged 53 years, Occu- agricultural,
3. Dhondiba Balwant Tikande,
Aged 61 years, Occu- agricultural,

1 to 3 R/O- Takali, Tal- Akole,
Dist- Ahmednagar.

...PETITIONERS

VERSUS

1. Ramnath Ganpat Tikande,
Aged 73 years, Occu- Agricultural,
2. Chandrakant Ramnath Tikande,
Aged 33 years, Occu- Agricultural,
3. Ashok Ramnath Tikande,
Aged 38 years, Occu- Agricultural,
4. Namdeo Manaji Tikande,
Aged 53 years, Occu- Agricultural,

1 to 4 R/O- Takali, Tal- Akole,
Dist. Ahmednagar.

5. State of Maharashtra through
Collector, Ahmednagar.

...RESPONDENTS

Mr. Vinod Y. Bhide, Advocate for Petitioners
Mr. A.N. Nagargoje, Advocate for respondents No. 1 to 3
Mr. D.B. Sodak h/f. Mr. K.N. Shermale, Advocate for respondent
No. 4
Mrs. Deepali Japde, AGP for respondent No. 5-State

.....

Bhagyawant Punde

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 10th JANUARY, 2025

PRONOUNCED ON: 16th JANUARY, 2025

JUDGMENT :

. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The order passed by Principal District Judge, Ahmednagar, dated 24.07.2014 in Misc. Application No. 24 of 2014, below Exhibit-1 is assailed in the present writ petition.

3. The petitioners have been arrayed as Non Applicants No. 8 to 10 in Misc. Application No. 24 of 2014 filed before Principal District Judge, Ahmednagar by present respondent No. 1 to 3 claiming relief under Section 24 of Code of Civil Procedure. By allowing the application by judgment and order dated 24.07.2014, Principal District Judge, Ahmednagar has directed to withdraw Regular Civil Suit No. 117 of 2011 pending before the file of Civil Judge, Junior Division, Akole and it was directed to be transferred to the Court of Civil Judge, Senior Division, Sangamner for trying and deciding the same along with Regular Civil Suit No. 289 of 2011, in accordance with law.

Bhagyawant Punde

Further directions are given by the Principal District Judge, Ahmednagar that all the endeavors shall be taken to see that both the suits are decided within two months from the first appearance of the parties. Said order has been challenged in the present writ petition by the petitioners who are Non Applicants No. 8 to 10 in the miscellaneous application.

4. The learned advocate for the petitioners submits that the petitioners have filed in Regular Civil Suit No. 117 of 2011 for perpetual injunction against respondent No. 1 to 3 herein and others in respect of Survey No. 5/9, 5/10 situated at village Takali, Taluka- Akole, Dist. Ahmednagar. As against that respondents No. 1 to 3 herein have filed Regular Civil Suit No. 289 of 2011 before the Court of Civil Judge, Senior Division, Sangamner against the petitioners, respondent No. 2 and 5 herein and others for perpetual mandatory injunction against respondent No. 5 and others State authorities for direction to correct the 7/12 extract and other land record in respect of Survey No. 5/8 situated at village Takali, Taluka- Akole, Dist. Ahmednagar.

According to the learned advocate for the petitioners, there is no common thread between the two suits neither the

suit properties are common, nor plaintiffs No. 1, 3 and 4 are party to the suit filed by respondent No. 1 to 3. No relief is sought in Regular Civil Suit No. 289 of 2011 filed at Sangamner against any of the parties in Regular Civil Suit No. 117 of 2011 filed in the Court at Akole. The evidence has already commenced in Regular Civil Suit No. 117 of 2011 before Civil Judge, Junior Division, Akole and the matter is part heard. It is the contention of learned advocate for the petitioners that this being suit for injunction proof of possession is material in said proceeding and it is not necessary to prove the title in every case. The issues in both the suits are totally different and are independent from each other. In spite of that respondents No. 1 to 3 have filed Misc. Application No. 24 of 2014 before Principal District Judge, Ahmednagar with a prayer to transfer Regular Civil Suit No. 117 of 2011 from Akole Court to Court at Sangamner.

5. Though, the petitioners herein have appeared and opposed the prayer made in the Misc. Application No. 24 of 2014, by filing written statement, the Principal District Judge, Ahmednagar has passed the order impugned, thereby committing serious patent jurisdictional error. It is submitted that the impugned judgment and order is nothing but abuse of

process of law amounting to failure of justice.

6. The sum and substance of arguments of learned advocate for petitioners is that both the suits which are clubbed together by the impugned order have been filed with a different prayer and even the parties to the suit are not one and the same. The scope of the two proceedings which are clubbed together is totally different. Even the properties involved in both the proceedings are different as the record discloses. Hence, in view of the fact that neither the parties, nor the properties in the clubbed suits are common the Principal District Judge, Ahmednagar has proceeded to pass the order impugned holding that the parties to the suit are same and question is to be decided about the title of suit properties bearing Survey No. 5/2B and Survey No. 5/2A, hence, it is desirable to transfer the suit from Akole to the Court of Civil Judge, Senior Division, Sangamner.

7. Learned advocate Shri. Nagargoje appearing for respondent No. 1 to 3 i.e. applicants in Misc. Application No. 24 of 2011 submits that in fact all the lands in dispute are part of old Survey No. 5, of which subsequently there was sub division.

Bhagyawant Punde

Though different sub divisions are formed, but the property involved is one and the same belonging to the members of same family. According to learned advocate for respondents even some of the parties are common in both the suits. He has drawn my attention to the Regular Civil Suit No. 289 of 2011 filed by respondent No. 1 to 3 wherein defendants No. 5 is Plaintiff No. 2 in Regular Civil Suit No. 117 of 2011. Similarly, defendant No. 7 in the suit filed by respondents No. 1 to 3 is defendant No. 3 in Regular Civil Suit No. 117 of 2011. Hence, he has tried to justify the order of Principal District Judge, Ahmednagar by trying to demonstrate that in fact the parties are also same in both the proceedings.

8. Learned advocate for respondents further makes a submission that as per description of the suit property given in the plaint in Regular Civil Suit No. 289 of 2011 Gut No. 5/2A-1 to the extent of 2 Acres and 6 Are and Gut No. 5/2A to the extent of 1 Acre are involved in the suit. He further submits that though Gut No. 5/2A-1 and 5/2A are mentioned, however, it was as per old record and presently it is numbered as Gut No. 5/8. Therefore, according to learned advocate for respondents No. 1 to 3, there is nothing wrong in the impugned order. According to

him, though the petitioners have contended that the prayers made in both the suits also differ and nature and scope of relief sought are also different, however, fact remains that there is a relief of injunction claimed in both the suits. Hence, he is trying to bring out commonality in two suits by relying upon the prayer for injunction made by him in the suit.

9. I have heard the learned advocate for the petitioners as well as learned advocates for respondents and learned AGP for State and I have also gone through the impugned order along with documents annexed to the writ petition.

10. The petitioners have annexed copy of Regular Civil Suit No. 117/2011 filed by them in the Court of Civil Judge, Junior Division, Akole. The said suit has been filed wherein the prayer is made for injunction against respondents and present respondents No. 1 to 3 are party to the said suit wherein property involved is Survey No. 5/2B, presently it is Gut No. 5/9 and 5/10. Similarly, I have also gone through the contents of Regular Civil Suit No. 289/2011 filed by present respondents No. 1 to 3. In the array of parties first four party respondents are State authorities i.e. revenue authorities and respondent No. 5 is

admittedly plaintiff No. 2 in Regular Civil Suit No. 117/2011 and defendant No. 7 is defendant No. 3 in the suit filed by present petitioners. The description of the properties involved discloses that the said suit is regarding Gut No. 5/2-अ1 and 5/2-अ i.e. as per present record Gut No. 5/A. As stated above the substantive prayer made in the said suit is for making correction in the revenue record on the basis of sale deed dated 27.03.1952, by way of interim relief during pendency of suit the plaintiff had sought perpetual injunction against defendants restraining them from causing obstruction to their peaceful possession.

11. In the application for clubbing of the suits it is the specific contention of present respondents No. 1 to 3, that the subject matter as well as the parties to both the suits are common. According to him, in both the suits parties are claiming excess area beyond the area mentioned in sale deed of 1952. Considering that said subject goes to the root of the matter and to avoid multiplicity of proceedings and divergent orders, applicant therein had sought clubbing of both the suits.

12. In the say filed by respondents No. 5, 8 and 10 opposing said application it is the specific contention that the

subject matter in both the suits as well as parties to the dispute and nature of dispute is totally different, therefore, there is no propriety in clubbing both the matters for being tried by one and the same Court. It is specifically stated that non applicants No. 1 to 4 in the application in fact are not at all parties to their suit pending at Akole. The subject matter of both the properties and even relief claimed is totally different. Hence, present petitioners had prayed for dismissal of the application.

13. Perusal of the impugned order discloses that, the Principal District Judge, Ahmednagar has observed that, after going through the plaint according to him parties of both the suits are same. It is further observed that the question to be decided about title of suit property bearing Survey No. 5/2B and 5/2A is the main question. Since the State Government is party in the matter pending on the file of Civil Judge, Senior Division, Sangamner, it is desirable to transfer the suit from Akole to Court at Sangamner for deciding both the suits simultaneously and expeditiously. Hence, he has been pleased to pass the order directing that Regular Civil Suit No. 117/2011 pending on the file of Civil Judge, Junior Division, Akole be withdrawn from the Court and be transferred to Civil Judge, Senior Division,

Sangamner for trying and deciding the same along with Regular Civil Suit No. 289/2011, in accordance with law. Further directions are given that the Civil Judge, Senior Division, Sangamner shall make all endeavors to see that both the suits are decided within a period of two months from the appearance of the parties.

14. Upon going through the impugned order, there is no justifiable reason given by Principal District Judge, Ahmednagar for transferring the suit from the file of Civil Judge, Junior Division, Akole to Civil Judge Senior Division, Sangamner. In fact the observations made by Principal District Judge, Ahmednagar that the parties are same is very much contrary to the record. Amongst the four plaintiffs in Regular Civil Suit No. 117/2011, only one of them is defendant in the suit filed by present respondents No. 1 to 3. As observed herein above even the subject matter and the relief claimed are also different, hence, there was no justifiable reason for the Principal District Judge, Ahmednagar for directing the suit to be withdrawn from one Court to be transferred to the other Court and tried it along with other suit.

Admittedly, the discretionary powers are vested with

the High Court as well as the District Court to transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, at any stage. It is very much within the powers of the Courts to transfer the suit upon satisfaction about the necessity to transfer the suit for trial and disposal. However, while passing the order under Section 24 of Code of Civil Procedure, the Court has to act judiciously while ordering such transfer. It has to be kept in mind that such transfer should not defeat the right of *dominus litis* to chose the forum. The Court has to strike a balance by taking into consideration the relevant facts and circumstances and to see that greater hardship is not caused by transfer of such proceedings. Merely, because some of the parties are same should not be the consideration while transferring the suit from one Court to other. Primarily, such power is to be exercised in the interest of justice.

15. In the present case it is categorically submitted by learned advocate for the petitioners that the evidence had already started in the suit filed by them, neither the properties involved in the suit are common, nor the substantive relief claimed by plaintiff in Regular Civil Suit No. 289/2011 is simiilar.

Relief claimed is against the Government authorities for correction in the revenue record as against that, the relief claimed by petitioners in their suit was of perpetual injunction. In spite of that, Principal District Judge, Ahmednagar has recorded a finding that the parties to the suit are same which in fact it is contrary to the record. Only one of the plaintiff in Regular Civil Suit No. 178/2011 was party to the suit filed by respondents No. 1 to 3. Hence, there was no propriety in passing the order thereby withdrawing the suit from the file of Civil Judge, Junior Division, Akole and transferring it to Civil Judge, Senior Division, Sangamner to be tried before the same Court. The Principal District Judge, Ahmednagar has failed to give proper reasons for transfer of said suit. Impugned order does not reflect that the Principal District Judge, Ahmednagar has applied his judicious mind while passing the impugned order. It is merely observed that the State Government is party to the matter pending before Civil Judge, Senior Division, Sangamner, therefore, it is desirable to transfer the suit from Court at Akole to decide both the suits simultaneously at Sangamner. Merely, because State Government is party the suit it is transferred to Sangamner. The reason given by Principal District Judge, Ahmednagar for transfer of suit is incomprehensible and not at all justifiable.

16. Learned advocate for the petitioners has relied on judgment of this Court in *Rekha Wd/o Late Avinash Raut vs. Shivaji Bhimrao Sapate*, 2011 (3) Mh.LJ 914 in support of his contention that mere convenience of parties may not be enough for transfer of suit unless it is shown that forum chosen by other side will result in denial of justice.

He has also relied on judgment of Supreme Court in the case of *Kulwinder Kaur @ Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust and Others*, (2008) 3 SCC 659, wherein it has been observed that, if no reasons have been disclosed for taking action of transfer of suit, such order is not at all justified. Hence, if the order of transferring the suit is not supported by just and reasonable cause, it makes the order unsustainable.

17. The present case is squarely covered by the observations cited by petitioners of Hon'ble Supreme Court as well as High Court. Even otherwise the order passed by Principal District Judge, Ahmednagar, being a cryptic order without recording any justifiable and satisfactory reason for transfer, is not sustainable. Hence, in view of observations made herein above, the writ petition deserves to be allowed. Hence, the

following order:

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 24.07.2014 passed by Principal District Judge, Ahmednagar, below Exhibit-1 in Misc. Application No. 24/2014 is hereby quashed and set aside.
- (iii) Regular Civil Suit No. 117 of 2011 shall be restored to its original file and shall proceed in accordance with law.
- (iv) Rule made absolute in above terms. Writ Petition stands disposed of.

(MANJUSHA DESHPANDE, J.)