

Reg.C.S.No.213/2012
Suryakant.vrs. Prakash

ORDER BELOW EXH.42

(Passed on 13th March, 2020)

1] Defendant No.1 filed application for dismissal of suit. He submitted that father of defendant No.1 Haribhau Dhage was owner of Survey No.53, P.H.No.79, admeasuring 4.04 H.R. at Bhiwapur. Haribhau Dhage died on 28.1.2012. He bequeathed his property by way of registered will deed on 17.12.2009. Therefore, defendant No.1 is owner of suit land.

2] Plaintiff filed suit before Civil Judge (Jr.Dn.), Bhiwapur about suit property for declaration and perpetual injunction namely RCS No.129/2008, which is pending before Civil Judge (Jr.Dn.), Bhiwapur.

3] Plaintiff filed suit RCS 213/2012 in Civil Court (Jr.Dn.), Umred about same property. Both suits are pending before different courts. Suit property came in the jurisdiction of Civil Judge (Jr.Dn.), Bhiwapur, therefore, this court has no jurisdiction to try the said suit. Hence, suit be dismissed.

4] Plaintiff filed his say at Exh.43. He admitted the schedule of property but denied the ownership of defendant No.1. He

submitted that property is gifted to plaintiff by father of plaintiff and defendant No.1 long ago. Father of plaintiff did not execute any will deed. That Will deed is under challenged. All Revenue authority passed order against defendant No.1. Defendant No.1 interfered possession of plaintiff, hence, that RCS 129/2008 filed against him.

5] The cause of action of that suit was arose on 2008. The application of defendant No.1 for stay of suit was rejected on the ground that the matters are different and not similar. That the said suit was stayed by Hon'ble High Court. Plaintiff filed suit RCS No.43/2018 at Bhiwapur for declaration that plaintiff no.1 has right on crop of sugarcane on 8 acre area. That matter is different and not similar. That said will deeds are bogus and false. That this suit is filed by two sisters of plaintiff No.1. The cause of action arose at Umred because the defendant No.1 alleged that two forged deed prepared at Umred. Son of defendant No.1 executed false and bogus sale deed at suit house situated at Umred. Plaintiff challenged the said sale deed in 2012 and that is cause of action.

6] Plaintiff have not filed same suit for same property. Subject matter of suits are entirely different. Cause of action of different period i.e. 2012, 2008 and 2018. NO issue have been framed by court regarding jurisdiction. In Written statement, no issue has been raised. As per section 21 of C.P.C. objection to jurisdiction shall be taken before framing of issues and this matter was fixed for

chief examination of plaintiff. By virtue of provision of Order 2 Rule 3 and 4, court has jurisdiction to try the suit. That all cause of action has arose at Umred. That defendants are resident at Umred. By virtue of section 17, this court has jurisdiction to try the suit. Application did not show any provision. The said application is filed to harass the plaintiff, hence, liable to be rejected.

7] Perused application. Heard learned counsels for both sides. It is averment of defendant that subject matter of both suits are same. Therefore, this court has no jurisdiction to try the suit. Property situated within jurisdiction of Bhiwapur. To show this fact, there is no document filed on record. Moreover, there is no plaint filed by defendant to prove his stand that suit is not tenable in the jurisdiction of this Court. It is contention of defendant No.1 that plaintiff filed R.C.S. No.129/2008 in Bhiwapur court. But to support of his contention, neither copy of plaint file nor order of Hon'ble High Court filed to show that Hon'ble High Court stayed this matter.

8] Learned counsel for defendant orally submitted that this court should be stayed the suit because High Court stayed the suit of Bhiwapur court. There is no substance in the contention of learned counsel for defendant.

9] On the other hand, learned counsel for plaintiff Mr.Tijare argued that application is not supported by any section and suits are

based on different cause of action. As per Order 2 Rule 3 and 4 and section 17 of Code of Civil Procedure, this court has jurisdiction. He submitted that nothing happened in Bhiwapur jurisdiction. Hence, application is liable to be rejected. There is substance of argument of learned counsel for plaintiff. Defendant failed to show that on what ground suit should have been dismissed. As per section 17 of the Code of Civil Procedure, suit may be instituted in any court within local limit of whose jurisdiction any portion of property is situate. Plaintiff submitted that house is situated within the jurisdiction of this court. There is no dispute regarding existence of house within jurisdiction of this court.

10] From the documents on Exh.4, doc. No.1 shows that will deed is executed within jurisdiction of Umred and Haribhau owned Gat No.53 in jurisdiction of Umred. Therefore, I am of view that this Court has jurisdiction to try the suit.

11] Moreover, property house is situated in jurisdiction of this court. Therefore, this court has jurisdiction to try the subject matter, though there may be properties situated in jurisdiction of Bhiwapur Court.

12] Learned counsel of plaintiff in support of his oral argument relied on **Shivnarayan .vrs. Maniklal delivered on 6.2.2019**. Hon'ble Apex Court in para no.7 observed that “ *where a*

suit is obtained relief respecting or compensation for wrong to immovable property situate within the jurisdiction of different court, the suit may be instituted in any court within the local limits of jurisdiction any portion of property is situate.”

13] In this case also some of the property came in the jurisdiction of this court, therefore, observation of Hon'ble Apex Court applicable here. There is no substance in the application filed by defendant. Application is not seems to be bonafide and on any valid reason. Hence, I pass following order :-

ORDER

Application is rejected with costs Rs.1,000/-.

Umrer.

Dt.13/03/2020