

MHWS070017502016

RCS No. 72/2016

Ramesh Vs. Prashant Gulalkari



ORDER BELOW EXH.39.

This is an application filed by defendant Nos.1 and 2 seeking stay of the proceeding of instant suit till the decision of the transfer petition filed under section 24 of the Code of Civil Procedure (for brevity hereinafter referred to as 'CPC') before the Hon'ble Principal District and Sessions Court, Washim.

2] Learned advocate for the defendants submitted that the disputed property mentioned in the plaint has been acquired by SDO/Land Acquisition Officer for the project of Samruddhi Mahamarg and the amount determined by the Land Acquisition Officer has been referred before the Hon'ble Civil Judge Senior Division, Mangrulpir for the apportionment thereof between the parties. It is further submitted that the issue involved in the instant suit is also substantially involved in Land Acquisition Reference pending before the Hon'ble CJSD, Mangrulpir vide LAR No.50/2019. Therefore, the instant suit is required to be tried in the court of Hon'ble CJSD, Mangrulpir along with the said LAR proceeding so as to avoid the different findings on the same evidence.

3] For the said purpose, defendants have filed transfer petition under section 24 of the CPC before the Hon'ble PDJ Court, Washim on 01/09/2022 to get the instant suit transferred from this court to the court of Hon'ble CJSD, Mangrulpir. Thus, prayed to stay the proceeding of present

suit till the decision in transfer petition pending in the court on Hon'ble PDJ, Washim. Hence, this application.

4] On the contrary, this application came to be strongly resisted by the learned advocate of plaintiff. It is contended that the proceeding of the instant suit has not been stayed by the Hon'ble PDJ Court, Washim. Therefore, the proceeding of present suit cannot be stayed without any order of the Appellate Court. It is further contended that this application has been filed by the defendant on 02/09/2022. However, till date no order of stay to the proceeding of present suit has been filed on record by the defendants. It is lastly submitted that the instant suit has been instituted by the plaintiff in the year 2016 and has been pending for the evidence of plaintiff. However, due to pendency of the instant application the plaintiff could not adduce his evidence in the matter till date. Therefore, prayed to reject the application with costs.

5] Heard both sides. Perused the application, say and gone through the record.

6] At the outset, it needs to be mentioned that the instant suit has been filed for the relief of partition and separate possession by the plaintiff in the year 2016. Wherein, issues were framed by my learned predecessor on 05/03/2018 below Exh.25. Record further shows that, till date no evidence has been led by the plaintiff. Thus, being the suit for partition the stake of all parties i.e. plaintiff and defendants are involved in the matter. Therefore, the partition suit has to be adjudicated as early as possible.

7] Now, coming to the instant application, this application is not supported by any affidavit. Moreover, what further transpires is that the defendants have not mentioned the registration number of the transfer petition pending in the court of Hon'ble PDJ Washim. Nor this application

has been supported by any document viz. copy of Exh.1 of the said transfer petition. Prima facie, there is no material to show that the defendants have filed any transfer petition under section 24 of the CPC in the court of Hon'ble PDJ, Washim seeking transfer of instant suit at Hon'ble CJSD Mangrulpir.

8] Under these circumstances, the present application definitely lacks merit and cannot be allowed as same would amount delay in the trial of an old suit of partition. Hence, I proceed to pass following order.

ORDER

1. Application Exh.39 is rejected.
2. Costs in main cause.
3. Plaintiff is directed to adduce the evidence (if any) on the next date of proceeding.
4. Both parties are directed to assist the court for the expeditious disposal of the present suit.

Date :- 17/10/2023.

(M.H. Haque)
Jt. Civil Judge Junior Division,
Karanja (Lad).

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/
Order are same word to word as per the original order.

Name of Steno. :- D. V. Daware (Stenographer-3)
Court Name :- Jt. Civil Judge (Jr.Dn.) and
J.M.F.C., Karanja. Dist. Washim.
Date :- 17/10/2023
Order signed by the :- 18/10/2023
presiding officer on
Order uploaded on :- 18/10/2023