

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1084 OF 1993

Vikram Pratap Gohil & Ors.

...Plaintiffs

Versus

Ranjit Premjibhai Gohil
(Since Deceased) & Ors.

...Defendants

WITH
CHAMBER SUMMONS (PROTHONOTARY) NO. 1 OF 1997
IN
SUIT NO. 1084 OF 1993
WITH
INTERIM APPLICATION NO. 4008 OF 2022
IN
SUIT NO. 1084 OF 1993
WITH
INTERIM APPLICATION NO. 261 OF 2021
IN
SUIT NO. 1084 OF 1993
WITH
TESTAMENTARY SUIT NO. 21 OF 1995
WITH
TESTAMENTARY SUIT NO. 41 OF 1993

- Mr. Jayesh Bhatt, for Plaintiff in TS/21/1995 and TS/41/1993.
- Ms. R.C. Nichani a/w Mr. Akshay Pawar, for Plaintiffs in S/1084/1993 and for Defendant Nos.1(b) and 1(c) in TS/21/1995 and for Defendant No.2 in TS/41/1993.
- Mr. Bhupesh Dhumatkar (Through Video Conferencing) a/w Ms. Manisha Virkhare and Mr. Nandkishor Supal i/b Divya Shah Associates, for Defendant No.12(a) and 12(b) in S/1084/1993, for Defendant No.4(a) and 4(b) in TS/41/1993 and for Defendant No.1(a) and 1(b) in TS/21/1995.
- Mr. Hemant Ghadigaonkar, for Defendant No.4(a) and 4(b).

CORAM : MANISH PITALE, J.

DATE : 03rd MAY, 2024

P. C. :

1. The present proceedings pertain to three suits, one an

Administration Suit bearing Suit No. 1084 of 1993 and two Testamentary Suits bearing Testamentary Suit Nos. 41 of 1993 and 21 of 1995.

2. By a judicial order dated 06th July, 2000, all the three suits were clubbed together for a joint trial.

3. As on today, the evidence in the three suits has been completed and the suits are pending final hearing.

4. At this stage, a notification came to be issued in pursuance of Bombay City Civil Court (Amendment) Act, 2023, whereby the pecuniary jurisdiction of the City Civil Court was enhanced to Rs. 10 Crores. In this backdrop, the Administration Suit i.e. Suit No. 1084 of 1993, was included in the list of suits to be transferred to the City Civil Court, as a consequence of enhancement of pecuniary jurisdiction of the City Civil Court.

5. In this backdrop, *preaicipes* were moved before the registry to highlight the aforesaid order dated 06th July, 2000, whereby a joint trial of all the three suits was directed.

6. There was some confusion as to whether the Administration Suit was indeed transferred to the City Civil Court in the light of the aforesaid notification and in that regard a report from the department was called for.

7. The Prothonotary and Senior Master of this Court submitted report dated 05th March, 2024, stating that after the aforesaid *praecipes* were received, the record was verified and it was found that since a judicial order was passed clubbing the three suits, the Administration Suit i.e. Suit No. 1084 of 1993, has been retained in this Court. Therefore, it is clear that the said suit has not been actually transferred to the City Civil Court.

8. Yet, the learned counsel appearing for the plaintiffs in the Testamentary Suits and the defendants in the Administration Suit submitted that in the future it should not happen that either party raises a grievance about the very jurisdiction of this Court to entertain and decide the Administration Suit, in the light of the notification, whereby the suit was to be transferred on the ground of pecuniary jurisdiction to the City Civil Court. In this backdrop, the learned counsel for the parties were called upon to place their responses on record, so as to assist this Court.

9. The learned counsel appearing for the plaintiffs in the Administration Suit and the defendants in the Testamentary Suits submit that in the light of the aforesaid order dated 06th July, 2000 passed by this Court clubbing the three suits, there was no question of transferring the Administration Suit to the City Civil Court on the ground of pecuniary jurisdiction. Attention of this Court was invited

to an order passed by this Court in the case of *B.H. Kapoor vs. K.J. Kapoor*¹, wherein this Court in similar circumstances had refused to transfer the papers to the City Civil Court. Reliance was also placed on judgment of this Court in the case of *G.V. Iyengar Vs. A.R. Sampathkumar*².

10. On the other hand, the learned counsel appearing for the plaintiffs in the testamentary suits relied upon a recent order of this Court in the case of *Rabo Bank vs. State Bank of India (Order dated 12th February, 2024, passed in Commercial Summary Suit No. 1 of 2001)*, and judgment of this Court in the case of *Grand Paradi Co-operative Housing Society Ltd. And Ors. Vs. Mount Blanc Properties and Industries Private Limited & Ors. (judgment and order dated 23rd February, 2024 passed in Suit No. 99 of 2002)*. It was submitted that in the said judgments, this Court had deliberated upon the inconvenience that would be caused to the parties and yet it was held that the transferred suit could not continue to be clubbed with other suits pending before this Court.

11. This Court has considered the rival submissions. In the first place, the Prothonotary and Senior Master of this Court has clearly reported that, as a matter of fact the Suit No. 1084 of 1993 has not been transferred to the City Civil Court, for the reason that by a

1 2016 SCC OnLine Bom 14201

2 2008(3) Mh.L.J 621

judicial order dated 06th July, 2000, this Court had clubbed all the three suits. Nonetheless, the apprehension expressed on behalf of the plaintiffs in the Testamentary Suits and defendants in the Administration Suit must be addressed.

12. This Court in a similar situation in the case of **B.H. Kapoor vs. K.J. Kapoor** (*supra*) opined that when suits were clubbed together by previous orders of the Court, they need not be necessarily segregated when one of the suits is required to be transferred to the City Civil Court, due to change in pecuniary jurisdiction. It was observed that the City Civil Court has limits to its pecuniary jurisdiction, while this Court does not. On that basis, the learned Single Judge of this Court in the case of **B.H. Kapoor vs. K.J. Kapoor** (*supra*) had refused to transfer the papers to the City Civil Court. In the case of **G.V. Iyengar Vs. A.R. Sampathkumar** (*supra*), this Court reiterated the position that only this Court would have the jurisdiction to decide testamentary suits and in that light observations were made with regard to the papers of a suit being retained in this Court.

13. In a recent order dated 19th April, 2024, passed by this Court, wherein, due to change in pecuniary jurisdiction one of the suits was transferred to the City Civil Court, this Court exercised power under Clause 13 of the Letters Patent and Section 12 of the

Bombay City Civil Court Act, 1948, to remove the transferred suit from the transferee Court to bring it back before this Court in the interest of justice.

14. In the present case, the three suits were clubbed together for a joint trial by judicial order dated 06th July, 2000. These suits have been pending in this Court from the year 1993 onwards and they are at the stage of final hearing. It would be a travesty of justice if at this stage, one of the suits i.e. the Administration Suit bearing Suit No. 1084 of 1993 is transferred to the City Civil Court due to enhancement of pecuniary jurisdiction of the City Civil Court. The issues arising in the suits are overlapping and it is precisely for this reason that the three suits were clubbed together by the aforesaid judicial order. Only on this ground, the papers pertaining to Suit No. 1084 of 1993 deserve to be retained in this Court. In any case, as a matter of fact, the aforesaid Suit i.e. Suit No. 1084 of 1993, has not been transferred to the City Civil Court as reported by the Prothonotary and Senior Master of this Court.

15. As to the reliance placed on judgments of this Court in the cases of **Rabo Bank vs. State Bank of India** (*supra*) and **Grand Paradi Co-operative Housing Society Ltd. And Ors. Vs. Mount Blanc Properties and Industries Private Limited & Ors.** (*supra*), suffice it to say that **Grand Paradi Co-operative Housing Society Ltd. And Ors. Vs.**

Mount Blanc Properties and Industries Private Limited & Ors. (*supra*) was not a case where the suits had been clubbed by a judicial order and in the case of **Rabo Bank vs. State Bank of India** (*supra*), the aspect of power retained by this Court under Clause 13 of the Letters of Patent and Section 12 of the Bombay City Civil Court Act, 1948, was not considered.

16. This Court is of the opinion that under Clause 13 of the Letters Patent, this Court has the power on the Original Side to remove and to try and determine any suit within the jurisdiction of any Court whether within or without the Presidency of Bombay either upon agreement of the parties to that effect or for the purposes of justice. Similarly under Section 12 of the Bombay City Civil Court Act, 1948, this Court has the jurisdiction to remove certain suits for trial by itself for any special reason.

17. In the present case, even if Suit No. 1084 of 1993, was to be transferred to the City Civil Court, this Court indeed has power to remove it from the transferee Court to be placed before itself for trial for special reason or for the purposes of justice.

18. As noted hereinabove, in the present proceedings, by a judicial order dated 06th July, 2000, all three suits were clubbed together for joint trial, the evidence in the three suits was completed and they are pending for final hearing. At this stage, it would not be

in the interest of justice to allow one of the suits to be transferred to the City Civil Court, only on the ground of pecuniary jurisdiction. It would be certainly for the purposes of justice and for a special reason that this Court retains the said Suit No. 1084 of 1993, to be heard and decided finally along with the two Testamentary Suits that have been clubbed together with the aforesaid suit.

19. For the aforementioned reasons, the apprehension expressed on behalf of the plaintiffs in the Testamentary Suit and the defendants in Administration Suit is found to be baseless. There is no question of any doubt being raised about the jurisdiction of this Court after the suits are finally decided.

20. Therefore, the suits shall now proceed for further consideration.

(MANISH PITALE, J.)