

kps

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.850 OF 2015

Ashok Satwaji Shete and others.

..Petitioners

-Versus-

Narsingh Bhujangrao Suryawanshi
and others.

..Respondents

.....

Mr.Ramesh I. Wakade, Advocate for the Petitioners.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd February, 2015

Per Court:

1 The Petitioners are the original Defendants in RCS No.156/2012 filed by the Respondents/ original Plaintiffs seeking declaration of ownership and possession with regard to Survey No.111 (Pot Hissa-3) admeasuring 4 H and 94 R.

2 The Plaintiffs in RCS No.156/2012, who have claimed to be the owners of the suit property, have also filed Special Civil Suit No.7/2013 seeking cancellation of the Sale Deed entered into by the Defendant Nos.1 and 2 in the earlier suit. By the second suit, the Plaintiffs desire that the sale be nullified and the sale deed be cancelled.

3 The Petitioners have moved an application Exhibit-21 invoking Section 10 of the Code of Civil Procedure claiming that the cause of action in the first suit is directly and substantially the same in the second suit. It was, therefore, prayed that Special Civil Suit No.7/2013 be stayed. By the impugned order dated 25.09.2014 the said application has been rejected.

4 The grievance of the Petitioners is that contradictory orders are likely to be passed in both the suits which are instituted by the Respondents/ Plaintiffs. The submission is that the parties to both the suits are virtually the same and the suit property in both the suits is also one and the same. As such, the subsequent suit needs to be stayed.

5 Upon hearing the learned Advocate appearing for the Petitioners and upon going through the petition paper book, it is revealed that the first suit instituted by the Respondents/ Plaintiffs is for seeking declaration of ownership and possession of the suit property Survey No.111. The Defendant Nos.1 and 2, who are the Petitioners and who claim to be in possession of a part of the suit property, have allegedly sold the said property through a Sale Deed to the Defendant No.3 in the second suit. The original Plaintiffs have, therefore, instituted Special Civil Suit No.7/2013 seeking cancellation of the Sale Deed on the ground that

the Defendants in the first suit could not have sold the property as the Respondents/ Plaintiffs are claiming ownership, title and interest in the same property.

6 The Trial Court, in the impugned order, has, therefore, rightly held that in the first suit the original Plaintiffs desire that their title and ownership be upheld. If that is upheld, it would mean that the Defendant Nos.1 and 2 (Petitioners herein) in the first suit have sold the property in their possession without being owners of the said property.

7 The Trial Court has, therefore, come to a conclusion that the causes of action involved in both the suits are different. If the Petitioners as Defendants in the first suit are held not to have any title or ownership over the suit land, then naturally it would assist the Trial Court in the second suit to come to a conclusion that the Sale Deed at the behest of the Petitioners would be unsustainable. The Trial Court has, therefore, observed that there is no situation wherein contradictory orders are likely to be passed. The cause of action is also different.

8 Section 10 of the Code of Civil Procedure is aimed at staying a subsequent suit wherein the matter is directly and substantially at issue in the previously instituted suit. It is in this backdrop that the Trial Court

has passed the impugned order and rejected application Exhibit-21.

9 The learned Advocate appearing for the Petitioners further submits that the Petitioners have sold out 44 R land out of the total suit land which is admeasuring 4 H and 94 R. The Petitioners claim that they could sell that portion of the suit property because they are titleholders to that portion of the suit property.

10 It is hence prayed by the Petitioners' Advocate that a direction be issued for clubbing both the suits so as to ensure that evidence recorded is common and the possibility of any contradictory findings could be ruled out.

11 Insofar as the above request of the Petitioners is concerned, this Court cannot exercise its jurisdiction to direct the clubbing of the suits since both the suits are being conducted before two different courts situated at Loha and Kandhar in Nanded district.

12 However, in the event the Petitioners desire to make an application for clubbing of the said suits, they may follow the due procedure as laid down in law and in the event such an application is made, the competent authority may consider the same on its own merits

and in accordance with law after hearing all the litigating parties.

13 The Writ Petition is, accordingly, disposed of with the
aforesaid liberty. No order as to costs.

(RAVINDRA V. GHUGE, J.)