

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10131 OF 2014

Smt. Shashikala Swaminath Kalshetti and Ors.] ... Petitioners

Versus

Rajendra Malinath Kalshetty and Anr.] ... Respondents

Mr. Drupad S. Patil for Petitioners.

Mr. I. M. Khairdi for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- APRIL 06, 2015

P. C. :-

1. Rule. With the consent of and at the request of the learned Counsel for Respondents, Rule is made returnable forthwith.

2. This petition challenges the Order dated 14/10/2014 by which the learned Civil Judge, Junior Division, Akkalkot has rejected the Petitioners' application under Section 10 of the CPC.

3. The impugned order records that there is no clarity as to whether the First Appeal instituted by the Petitioners against Judgment and Decree dated 10/10/2001 is pending or not. The impugned order also notes that the issues in both the suits are not identical.

4. The learned Counsel for Petitioners has made a solemn statement that the First Appeal against the Judgment and Order dated 10/10/2001 had earlier been dismissed for default, however, the same has now been restored. Accordingly, it does appear that the First Appeal is pending adjudication before the District Court. On the aspect of similarity of issues, the impugned order records no discussion.

5. Accordingly, it would be appropriate if the impugned order dated 14/10/2014 is set aside and the matter is remanded to the learned Civil Judge for fresh decision on the Petitioners' application under Section 10 of the CPC.

6. It is made clear that this Court has not examined the matter on merits and it would be open for the learned Civil Judge to decide the application under Section 10 on its own merits and in accordance with law.

7. All contentions of all parties are kept open.

8. Rule is made absolute to the aforesaid extent only. There shall, however, be no order as to costs.

(M. S. SONAK, J.)