

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.995 of 2014

1 Shri Vishnu Bala @ Balu Kudale)

Age 68 yrs. Occ. Agriculture)

Residing at Post Lavale, Tal Mulshi Dist Pune)

2 Shri Pandurang Bala alias Kudale)

Age 66 yrs. Occ. Agriculture)

Residing at as per 1 and Adinath Nagar,)

Telco Colony, N. R. Shinde Complex,)

Bhosari, Pune 411 039)

3 Shri Narayan Bala alias Balu Kudale)

Age 62 yrs. Occ: Agriculture)

Residing at as per 1 and Plot No.1)

Malati Apartment, Kate Pimpale Road,)

Pimpri, Pune 411 017)

4 Shri Sudam Bala alias Balu Kudale)

Age 58 yrs, Occ Agriculture)

R/at as per no.1)

5 Smt. Parubai Bala alias Balu Kudale)

Age 93 yrs. Occ: Agriculture,)

residing at as per no.1)

6 Chandrabhaga Chandrakant Barke)

age 68 yrs. Occ: Housewife,)

residing at 406/B, Somvar Peth,)

Barke Aali, Pune 411 001	)	
7 Sindhutai Dattatraya Shevkar	)	
Age 63 years, Occ: Housewife	)	
Residing at Indori, Kande Vasti,	)	
Tal Maval, Dist Pune	)	
8 Mukta Kondiba Lokhande	)	
Age 51 yrs, Occ: Household	)	
R/at, Baner Gaon, Tal Haveli,	)	
Dist Pune	)	
9 Malan Namdeo Kadmane	)	
age 46 yrs., Occ Household,	)	
R/at Nigdi Jakat Naka,	)	
Sanyongnagar, Nigdi, Pune	)	..Petitioners
Vs.		
1 Shri Vasant Baban Kudale	)	
Age 67 yrs. Occ: Agriculture	)	
R/at. At post Lavale,	)	
Tal Mulshi, Dist Pune	)	
2 Shri Ramesh Baban Kudale	)	
Age 63 yrs. Occ: Agriculture	)	
R/at, Radhey Nivas, S. No.12	)	
Vadgaon Khurd, Lagad Mala, Dist Pune	)	
3 Shri Ramdas Baban Kudale	)	
Age 55 yrs. Occ: Agriculture,	)	
R/at. Lavale, Tal Mulshi, Dist Pune	)	

4 Shri Arun Baban Kudale)
Age 55 Yrs, Occ: Service)
R/at, Lavale, Tal Mulshi)
Dist Pune)

5 Shri Dnyaneshwar Baban Kudale,)
Age 52 Yrs. Occ: Service)
R/at Lavale, Tal Mulshi, Dist Pune)

6 Indumati Dnyaneshwar Alhat)
Age 59 yrs. Occ Household)
R/at Malwadi, Talegaon Dabhade)
Tal Maval, Dist Pune)

..Respondents

Mr.P. B.Shah, Advocate for the Petitioners.

Mr. A.B.Avhad, Advocate for the Respondents.

CORAM : R.M.SAVANT, J

DATE : 8th October 2015

ORAL JUDGMENT :

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The order dated 20-12-2013 passed by the Learned 13th Joint Civil Judge Junior Division, Pune, is taken exception to by way of the above Petition. By the said order, the Trial Court has suo-moto stayed the Suit in question being Regular Civil Suit No.1351 of 2013 in the light of the earlier Suit being

Regular Civil Suit No.902 of 2010 pending between the same parties. The said Suit has been stayed on the ground that the properties in both the Suits are same and the material point in issue in between the parties in both the Suits is as regards the possession of the suit properties. The Trial Court has also observed that the interim application in the earlier Suit is also pending on the same line as the interim application filed by the Plaintiffs in the present Suit. The Trial Court has, therefore, deemed it fit to exercise powers under Section 10 of the Civil Procedure Code, and stayed the Suit.

3 The earlier Suit i.e. Regular Civil Suit No.902 of 2010 which has been filed by the Respondents herein who are the Defendants in the present Suit for a declaration of partition in terms of the compromise dated 23-11-1974 and other reliefs more particularly stated in the said Suit. In the said Suit, an application under Order VII Rule 11(d) came to be filed by the Defendants of the said Suit i.e. the Plaintiffs in the present Suit which application came to be rejected by the Trial Court by order dated 11-4-2011. The said order is a subject matter of challenge by the Defendants in Civil Revision Application No.543 of 2011 which is a companion matter. The said Civil Revision Application was admitted by a Learned Single Judge of this Court and by the interim order passed therein, the said earlier Suit i.e. Regular Civil Suit No.902 of 2010 came to be stayed. The Civil Revision Application was heard by this Court today i.e. 8-10-2015 and has been dismissed by an order passed today.

Hence, there is now no impediment for the said earlier Suit to proceed. In so far as present Suit is concerned, the same is filed for an injunction. Though the suit properties are same, the relief sought by the Plaintiffs in the present Suit i.e. the Defendants in the earlier Suit is restraining the Plaintiffs of the earlier Suit i.e. the Respondents herein from interfering with their possession. The instant Suit was filed when the earlier Suit i.e. Regular Civil Suit No.902 of 2010 was stayed by this court pursuant to the order passed in the aforesaid Civil Revision Application.

4 As indicated above, the Trial Court has suo-moto framed the issue as to whether the second Suit was maintainable and stayed the same by invoking the jurisdiction under Section 10 of the Civil Procedure Code. It is required to be noted that in the instant Suit, an application Exhibit 5 for temporary injunction was heard and only the order remained to be passed and it is at the said stage that the Trial Court framed the issue and has by invoking Section 10 has stayed the instant Suit. Though the properties are same in both the Suits, the contours of the reliefs sought under the two Suits is therefore different. Having regard to the same, the Trial Court at the most could have directed both the Suits to be heard together without staying the Suit by invoking Section 10 of the Civil Procedure Code. In my view therefore, the interest of justice would be served if the impugned order is set aside and both the Suits are directed to be heard together and by the same Court.

5 The Learned Counsel appearing on behalf of the Petitioners i.e. the Plaintiffs in the instant Suit i.e. Regular Civil Suit No.135 of 2013 states that common evidence can be led in both the Suits as the properties involved are the same. Statement accepted. The Learned Counsel appearing for the Respondents herein i.e. the Plaintiffs in the instant Suit, fairly states that he has no objection to the said course of action being followed namely that the both the Suits be heard together and common evidence be led. Hence the following directions:

- (i) The impugned order dated 20-12-2013 is quashed and set aside.
- (ii) Both the Suits i.e. the earlier Suit being Regular Civil Suit No.902 of 2010 and the instant Suit i.e. Regular Suit No.1351 of 2013 would be heard together by the same court.
- (iii) The Learned Counsel for the parties i.e. Mr. Shah for the Plaintiffs i.e. the Petitioners herein and Mr. Avhad for the Defendants i.e. the Respondents herein are agreeable to common evidence being led in both the Suits.
- (iv) The Trial Court is directed to hear and decide the application Exhibit 5

filed by the Plaintiffs in the instant Suit as also the application for injunction, if any, filed in the earlier Suit and if pending together, and decide the same latest by 31-12-2015.

6 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order