

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3469 OF 2017

Late Mr. Laxman Genuji Satav (since deceased) .Petitioners
through Lrs. & ors.

Vs.

Kailas Laxman Satav & anr. .Respondents

Mr.Uday P. Warunjikar, Advocate, for the Petitioners
Mr.S.C.Wakankar, Advocate, for the Respondent No.1

CORAM : R.G.KETKAR, J.

DATE : 23.03.2017

P.C.

. Not on board. At the request of Mr. Warunjikar, taken up in
the production board.

2. Heard Mr. Warunjikar, learned counsel for the Petitioners
and Mr. Wakankar, learned counsel for the Respondent No.1 at length.

3. By this Petition under Article 227 of the constitution of
India, the Petitioners have challenged the Judgment and Order dated
23.02.2017 passed by the learned 4th Additional Judge, Small Causes
Court & Jt.C.J.S.D., Pune below Exh.270 in Spl.C.S.No.82 of 2011. By

that order, the learned trial Judge rejected the Application made by the Petitioners under Section 10 of the Code of Civil Procedure, 1908 (For short “CPC”) for staying the proceedings of Spl.C.S.No.82 of 2011 during the pendency of Spl.C.S.No.631 of 2011.

4. In support of this motion, Mr. Warunjikar has taken me through (i) copy of the plaint in R.C.S.No.982 of 2008 (re-numbered as Spl.C.S.No.82 of 2011) which was presented on 20.05.2008 having Diary No.2896; (ii) R.C.S.No.972 of 2008 (re-numbered as Spl.C.S.No.631 of 2011) which was presented on 20.05.2008 having Diary No.2895; (iii) Application Exh.270 made by the Petitioners in Spl.C.S.No.82 of 2011 for staying the proceedings of that suit pending Spl.C.S.No.631 of 2011 and (iv) paragraphs 14 to 17 of the impugned Order. He submitted that both the suits are for partition and separate possession. Parties are related to each other. In fact, in Spl.C.S.No.631 of 2011, more properties are included for partition and separate possession. In Spl.C.S.No.82 of 2011, only five properties are included for partition and separate possession. He submitted that as basically, properties are substantially same, the learned trial Judge should have stayed the proceedings of Spl.C.S.No.82 of 2011 pending disposal of Spl.C.S.No.631 of 2011.

5. On the other hand, Mr. Wakankar supported the impugned Order. He submitted that parties in both the suits are not same. In fact, Defendants No.2 to 6 in Spl.C.S.No.631 of 2011 are not Defendants in Spl.C.S.No.82 of 2011. He further submitted that arguments of the Plaintiffs in Spl.C.S.No.82 of 2011 are over and suit is listed for arguments of Defendants. He, therefore, submitted that no case is made out for interfering with the impugned Order.

6. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record.

7. For the reasons recorded in paragraphs 14 to 17 of the impugned Order, I do not find that the learned Judge has committed any error in passing the impugned Order. Hence, Petition fails and same is dismissed.

(R.G.KETKAR, J.)