

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

WRIT PETITION NO. 5691 OF 2014

Shri Hrishikesh Balkaran Gaderia & ors. ... Petitioners.
Versus
Shri Sharadbhai Govindbhai Patel. ... Respondent.

WITH

WRIT PETITION NO. 5694 OF 2014

Shri Hrishikesh Balkaran Gaderia & ors. ... Petitioners.
Versus
Shri Yaqoob Sattar Pochi. ... Respondent.

WITH

WRIT PETITION ST. NO. 13275 OF 2014

Shri Hrishikesh Balkaran Gaderia & ors. ... Petitioners.
Versus
Shri Vinodbhai Govindbhai Patel. ... Respondent.

WITH

WRIT PETITION ST. NO. 13250 OF 2014

Shri Hrishikesh Balkaran Gaderia & ors. ... Petitioners.
Versus
Shri Nazim Yasin Ansari. ... Respondent.

WITH

WRIT PETITION ST. NO. 13273 OF 2014

Shri Hrishikesh Balkaran Gaderia & ors. ... Petitioners.
Versus
Shri Taufique Gaffar Pochi. ... Respondent.

Mr. Prajakt M. Arjunwadkar, advocate for petitioners.

Mr. J.A. Udaipuri a/w. Ms. Madhu Lad a/w. Ms. Nazish Syed i/b.
Udaipuri and Co., advocate for respondent.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 21, 2017

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned
Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioners herein happens to be the original plaintiffs in
Regular Civil Suit No. 195 of 2012 pending before Civil Judge, S. D.,
Palghar. The Petitioners are the original defendant Nos. 1 to 7 in
Special Civil Suit No. 65 of 2010 pending before Civil Judge, S.D.

Palghar. On 17/10/2013 the Petitioners had filed an application under section 10 of the Code of Civil Procedure, thereby requesting the Court to stay the proceedings in the subsequent suit i.e. RCS No. 195 of 2012.

4 It was specifically contended by the Petitioners that the issues framed in both the suits i.e. in Special Civil Suit No. 65 of 2010 as well as Regular Civil Suit No. 195 of 2012 are one and the same. It was also contended that both the suits revolve around the sale deed dated 4th August, 2010 which was purportedly executed in favour of the petitioner No. 1. The earlier suit i.e. Special Civil Suit No. 65 of 2010 was instituted by one Farid Shaikh. The prayers in the said plaint are as follows :

“(i) It be declared that the Plaintiff and defendant No. 8 to 12 are owner and in lawful possession of the suit property, on the basis of last Will and testament of Late Shehnaz Usman Khan dated 22/8/2010 or in the alternative, on the basis of adverse possession over the suit property, hostile to the knowledge of defendant No. 2 to 7 and others.

(ii) It be declared that, the impugned Sale Deed dated 04/08/2010 executed in favour of defendant No. 1 by defendant No. 2 to 7 by registering in the office of Sub-Registrar, Palghar on 04/08/2010 at Sr. No. 5962/2010 is false, void, illegal, not supported by valid and legal consideration and it is not binding upon the Plaintiff and defendant No. 8 to 12 and it be ordered to be cancelled and the same be intimated to the office of Sub-Registrar, Palghar for making appropriate entry in its Official record.”

5 There is a specific prayer that it be declared that the impugned sale deed dated 4/8/2010 executed in favour of the defendant No. 1 by the defendant Nos. 2 to 7 registered in the office of Sub-Registrar, Palghar on 4/8/2010 at Sr. No. 5962/10 is false, void, illegal and has not been executed for valid and legal consideration and hence, the said sale deed is not binding upon the plaintiff and the defendant Nos. 8 to 12.

6 The issue No. 4 framed in Special Civil Suit No. 65 of 2010 reads as follows :

Does Plaintiff prove that sale deed dt. 04/08/2010 executed in favour of Def. No. 1 in respect of suit property is false, void, illegal therefore not binding upon the plaintiff ?

7 It is pertinent to note at this stage that issue No. 1 framed in the subsequent suit i.e. R.C.S. No. 195 of 2012 reads as follows :

Whether the defendant No. 1 has the title over the suit property in view of the sale deed registered on 4/8/2010 and whether the same is proved by the plaintiff.

8 The subsequent suit i.e. R.C.S. No.195 of 2012 has been filed by the Petitioners seeking vacant and peaceful possession from the tenants who are the defendants in the subsequent suit. The said application was rejected by an order dated 7/2/2014. Hence, the present Writ Petition.

9 The learned Counsel for the Petitioners has submitted that it would be necessary to stay the subsequent suit since both the suits

revolve around the sale deed executed on 4/8/2010. The learned Counsel for the Petitioners fairly submits that all the defendants in the previous suit are not the defendants in the subsequent suit. However, the suit property is the same and the title of the suit property depends upon the sale deed executed dated 4/8/2010. It is submitted that once the issue No. 4 in earlier Suit No. 65 of 2010 is decided, it would naturally mean that issue No. 1 in the subsequent suit would be decided and subsequently, the Petitioners would not have any statutory right to claim possession of the suit property.

10 Section 10 of the Code of Civil Procedure, 1908 reads as follows:

“10. Stay of suit.- No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or continued by the Central

Government and having like jurisdiction, or before the Supreme Court.”

11 Section 10 contemplates that it is only necessary to see as to whether the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title. In the present case, it cannot be doubted for a moment that the issue involved in the both the suits is pertaining to sale deed dated 4/8/2010.

12 The learned Counsel for the respondent Mr. Udaypuri submits that the subsequent suit has been orchestrated by the plaintiff and that it is not necessary to stay the said suit. In any case, the respondent herein happens to be one of the tenants/defendants in the subsequent suit and no prejudice could be caused to the defendants upon staying the subsequent suit in which the Petitioners happen to be the plaintiffs.

13 It is in these circumstances that the order dated 7/2/2014 deserves to be quashed and set aside. The Petition deserves to be allowed. However, it is made clear that besides adjudicating upon the issue whether the subsequent suit needs to be stayed, this court has only gone into the issue as to whether the issue in question in both the suits is one and the same and not on facts nor the contentions raised by the respective parties to both the suits. Hence, all other contentions would be kept open.

14 The Writ Petitions are allowed. Learned Joint Civil Judge, J.D. Palghar is hereby directed to proceed with further stages of Special Civil Suit No. 65 of 2010 and stay further proceedings in R.C.S. No. 195 of 2012 till decision of Suit in SCS No. 65 of 2010.

15 Rule is made absolute in the above terms. Writ Petitions are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)