

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL REVISION APPLICATION NO. 425 OF 2018****Dilip Abajirao Pawar & Anr.****..... Applicants****VERSUS****Kisan Raghunath Thakar & Ors.****..... Respondents**

Mr.Abhaykumar Apte for the Applicants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.**DATE : 20th AUGUST, 2018****P.C.**

By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908, the applicants (original defendants) have impugned the order dated 22nd February, 2018 rejecting the application (Ex.32) under section 10 of the Code of Civil Procedure, 1908 *inter alia* praying for stay of the Regular Civil Suit No.223 of 2014 filed by the respondents.

2. With the assistance of the learned counsel for the applicants, I have perused the application filed by the applicants before the learned trial judge under section 10 of the Code of Civil Procedure, 1908. A perusal of the application indicates that it was the case of the applicants that both the suits were between the same parties involving the same subject matter. According to the applicants, the issues and questions in both the suits were directly and substantially the same. On these grounds, the application was made under section 10 for stay of the trial suit bearing no. RCS/223/2014. It was contended that the suit bearing

RCS No.191 of 2014 was already pending between the same parties in respect of the suit property.

3. The learned trial judge has considered the case of both the sides and after considering the prayers in both the suits, has held that the present suit was for declaration and injunction whereas in the earlier suit, the prayers were for declaration that the document dated 1st October, 1992 was a mortgage deed and not the sale deed. The second prayer in the earlier suit was for a declaration in respect of the said document as null and void. The third prayer was also for declaration that the document was null and void. However in the second suit prayer was only for permanent injunction and not to disturb the possession of the plaintiff.

4. The learned trial judge has considered the mandatory conditions applicable to the application under section 10 of the Code of Civil Procedure, 1908 required and to be satisfied and considered in an application for stay under section 10 of the Code of Civil Procedure, 1908. The learned trial judge has observed that the defendant no.1 was not the same party nor the defendant nos. 2 and 3 represented him in RCS No. 191 of 2014. The title in both the suits was different. The second suit was filed on 12th August,2014 whereas the first suit was filed on 22nd July, 2014. The cause of action also arose on two different dates. The reliefs claimed in both the suits are different. All the parties in both the suits were not common.

5. On perusal of the prayers in both the suits and cause title of the

plaint and the prayers, I am of the view that the learned trial judge has rightly considered all these aspects and compared the pleadings, prayers and parties in both the suits and has rightly rejected the application under section 10 of the Code of Civil Procedure, 1908 filed by the applicants. In my view, none of the conditions prescribed in section 10 in the Code of Civil Procedure, 1908 are satisfied in the application filed by the applicants under section 10 of the Code of Civil Procedure, 1908. There is no infirmity in the impugned order dated 22nd February, 2018 passed by the trial court.

6. Civil revision application is devoid of merit and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]

**Kanchan
Vinod
Mayekar**

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2018.08.23
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