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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***CIVIL WRIT PETITION NO.10361 OF 2017***

Rajendra Himatlal Salot & Ors.

..Petitioners.

V/s.

Sanjay Bhupatrai Shah & Ors.

..Respondents.

Mr.R.V.Govilkar with Ms.Shoba N.Khan for the petitioners.

Mr. P.S.Dani, Senior Advocate i/b. Mr. K.P.Shah for respondent Nos.1 to 3.

***CORAM: NITIN W.SAMBRE, J.***

***DATE : FEBRUARY 24, 2018***

**PC.:-**

The petitioners have filed the present petition challenging the order dated April 3, 2014 passed by the Second Joint Civil Judge, Senior Division, Kalyan whereby the prayer for clubbing of the suit moved vide Exhibit-44 in Special Civil Suit No.84/2012 with Special Civil Suit No.469/2009 came to be rejected.

2. The learned counsel for the petitioners – the original

plaintiffs would urge that the Court in part though agreed to the claim put forth by the petitioners-plaintiffs for final disposal of the suit together, however, refused clubbing of trial in both suits together. So as to substantiate his contention for clubbing of both suits, he would invite attention of this Court to the factual matrix involved in each of the suit, cause of action and the reliefs claimed. He submits that in both the suits claim is for specific performance involving the same properties, hence it was in the interest of the two parties viz. the plaintiffs and the defendants that the suits should be clubbed together and be tried. He would submit that if on the issues in the suits if different set of evidence are permitted to be adduced, it will give rise to the complications in the suits and as such, sought indulgence from this Court in its extra-ordinary jurisdiction.

3. *Per contra*, Mr.Dani, the learned senior counsel would urge that the order impugned takes care of the interest of the present petitioners-plaintiffs, as the Court having dwelt upon the factual matrix and cause of action in each suit has directed final hearing and disposal of the suit by a common judgment. He

submits that the interest of the petitioners is already protected, as such no interference is warranted at this stage.

4. The impugned order is perused and appreciated in the backdrop of the cause of action to the respective parties to the suit. It is to be noted that both the suits are based on two different cause of action, may be in relation to the same property, however the factual matrix in each suit including cause of action differs.

5. Apart from the above, an earlier attempt on the part of the petitioners to enter into the suit of the respondents as a party-defendants so as to avoid repetition of proceedings in regard to the same suit properties was rejected, which order was confirmed upto the Apex Court. That being so, the trial Court looking to the fact that the interest of the petitioners can be safeguarded by ordering joint final hearing and delivering of common judgment in both the suits. In my opinion, said observations caters to the need of the petitioners. The order passed by the Court below is well reasoned as such in my opinion, does not call for any interference. The petition is dismissed.

6. In view of the joint request made by the parties and in view of the policy of the High Court to expedite the hearing of the suits which are pending for more than five years, hearing of both the suits is expedited.

*(NITIN W.SAMBRE, J.)*