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

WRIT PETITION NO. 12032 OF 2017

Sudhir Thorat	...	Petitioner
V/s.		
Ramchandra D Waghmode (decd)		
through LRs	...	Respondents

Mr. Utagikar Makrand Avinash for the
Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] The petitioner is challenging the order dated 18.8.2017, passed below Application Exh.48, by the 3rd Joint Civil Judge Junior Division, Malashiras, in R.C.S.No.64 of 2011.
- 3] The application Exh.48 was filed by petitioner, for staying the suit bearing R.C.S.No.64 of 2011 on the ground that the petitioner, who is defendant in this suit, has already filed suit bearing R.C.S.No.442 of 2008, for declaration and injunction in respect of the

same property; whereas the present suit bearing R.C.S., NO.64 of 2011, was filed by respondent for redemption of the mortgage. It was submitted that both the suits involve common question of fact and law and not only parties in both the suits are same, but the issue involved therein is same and hence as petitioner's suit is that of earlier in time, second suit filed by the respondent be stayed under Section 10 of the Code of Civil Procedure Code.

4] The trial Court has rejected this application only on the ground that both the parties are litigating on different titles as titles of both the suits are different.

5] It may be true that titles of both the suits are different in the sense that suit filed by the petitioner is for *declaration and injunction*; whereas the suit filed by respondent is for *redemption of the mortgage* and in such circumstances, the issue involved therein is same. As a matter of fact the interest of justice requires that both the suits should be tried together simultaneously.

6] Learned counsel for the petitioner brought to the notice of this Court the say filed by respondent to the application of the petitioner, which is marked as Exh.43 and it's copy is produced at

page No.28 of this petition which shows that respondent has also suggested that instead of staying the suit, both the suits be decided together.

7] In view thereof, it would be proper to dispose of this writ petition by directing the trial Court to decide both the suits together instead of staying any of the suit.

8] The writ petition is disposed accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]