

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

WRIT PETITION NO.10307 OF 2019

JAISHING BHIMA PAWAR AND OTHERS  
VERSUS  
SHAHAJI RAMBHAU PAWAR

...

Advocate for the Petitioners : Shri Deshmukh Sachin S.

...

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 21<sup>st</sup> August, 2019**

**Per Court:**

1           The petitioners are aggrieved by the order dated 21.05.2019 passed by the Trial Court by which, the application exhibit 20 filed by the petitioners/ defendants in RCS No.103/2019 invoking Section 10 of the Code of Civil Procedure praying for stay to the said suit in view of the earlier RCS No.216/2018, has been rejected.

2           The learned advocate for the petitioners has strenuously criticized the impugned order. He draws my attention to the grounds formulated in the memo of the petition. The contention is that the property involved in both the suits is one and the same. The petitioners are the defendants in the 2019 suit and petitioner nos.2 and 3 are the plaintiffs in the 2018 suit. If the reliefs sought in the two suits are identical and the same suit property is involved, the subsequent suit has to

be stayed in order to avoid conflicting judgments.

3 I find that, in principle and legal propositions, the learned advocate for the petitioners is right. However, I have perused the sale deed dated 15.02.2018, which is the subject matter of the earlier suit. The parties are residing in hamlets, which are commonly known as "Tanda" in local language. These hamlets are normally adjoining each other.

4 In the first suit, the issue is of 40 R land having Ghanal Tanda on the east side of the property, the land of Ashok Kishan Jadhav on the west side, the land of Kalidas Rathod on the south side and the land of Gulab Rathod on the north side. In the second suit, though the gat number is the same, which is a total area of 7 H and 54 R, only 20 R land is the suit property. On the east side of the said 20 R land, there is Govardhan Tanda, on the west and south sides there is land belonging to Ashok Jadhav and on the north side the land belonging to Gulab Rathod is situated.

5 It is, therefore, apparent that two different sizes of the lands are the suit properties. The larger land (40 R) involved in the first suit, has the Ghanal Tanda on the east side and the land belonging to Kalidas Rathod on the south side. In the second suit, a smaller portion (20 R) of the land is involved and Govardhan Tanda is on the east side and the land of Ashok Jadhav is on the west and south side. The properties appear to be different. The Trial Court has also come to the conclusion that the suit

properties are different.

6 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed to this extent.

7 Insofar as the issue of appointment of the court commissioner in the second suit is concerned, this Court has consistently held that the court commissioner should be appointed after the recording of oral evidence is concluded. Some of the orders passed by this Court are as under :-

- (a) *Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.*
- (b) *Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013).*
- (c) *Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*
- (d) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.*
- (e) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*
- (f) *Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP*

*No.1096/2018 dated 31/01/2018).*

*(g) Baburao Jairam Borade vs. Fakira Tukaram Lanekar, Writ Petition No.1743/2018 decided on 28.08.2018 (Aurangabad Bench).*

8           In view of the above, after the recording of oral evidence is concluded, if any litigant moves an application for appointment of the court commissioner, the Trial Court would consider the same on its own merits and without being influenced by the impugned orders.

9           This Writ Petition is, therefore, dismissed.