

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3512 OF 2013

Shri. Baban Bapu Borpate	...	Petitioner
V/s.		
Smt.Yashoda Yashwant Patil	...	Respondent

...

Mr.Ranjeet Patil, for the Petitioner.

...

CORAM: K.K. TATED, J

DATED : 17 JANUARY 2019

P.C. :

1 Heard learned Counsel Mr.Patil for Petitioner.

2 By this Writ Petition under Article 227 of the Constitution of India, Petitioner/original defendant No.1 in Special Civil Suit No.119 of 1991 new Special Civil Suit No.28 of 1999 challenges the Order dated 28.01.2013 passed by Jt.Civil Judge Junior Division, Islampur rejecting his application below Exhibit 56 under Section 10 of the Code of Civil Procedure to stay the further proceedings in Special Civil Suit No.119 of 1991 new Special Civil Suit No.28 of 1999.

3 Trial Court rejected Petitioner's application below Exhibit 56 under Section 10 of the Code of Civil Procedure on the ground that Special Civil Suit No.28 of 1999 was for cancellation of sale deed dated 08.02.1989 in respect of the suit property i.e. land bearing Gat No.1321 admeasuring 0.41

R situated at Kameri, Taluka Walwa, District Sangli, whereas the Regular Civil Suit No.420 of 2001 was only for possession of the suit property. The trial Court also held that in both the suits, different parties were shown in cause title.

4 Learned Counsel Mr.Patil appearing on behalf of Petitioner submits that the Court below failed to consider the fact that the questions involved in both the suits were one and the same. Hence, the subsequent suit is required to be stayed. He further submits that in Special Civil Suit No.28 of 1999, matter reached up to the High Court in Second Appeal. Therefore, the Order passed by the trial Court is required to be set aside.

5 The learned Counsel for Petitioner submits that vide Order dated 25.02.2010 passed by this Court (Coram : R. S. Mohite, J) in Civil Application No.218 of 2010 in Second Appeal No.83 of 2010, this Court had directed both the parties to maintain status quo. The said Order reads thus :

“1. Heard both sides. Rule. By consent of the parties, rule is made returnable forthwith.

2 The second appeal has been admitted by a separate order passed today. In my view, the ends of justice will be met if both the parties are directed to maintain status quo as of today pending the disposal of the appeal. Rule is made absolute in the aforesaid term.”

6 I heard the learned Counsel for Petitioner at length.

7 Bare reading of the complaints in Regular Civil Suit
No.420 of 2001 and Special Civil Suit No.28 of 1999 shows
that both the suits filed by the parties for different cause of
action. Special Civil Suit No.28 of 1999 was for cancellation of
sale deed dated 07.11.1989, whereas the Regular Civil Suit
No.420 of 2001 was for possession and injunction. Hence, I
do not find any reason to interfere in the Order passed by the
trial Court.

8 Hence, Writ Petition stands rejected.

(K.K. TATED, J.)