

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5342 OPF 2015

Madhukar Laxman Dhuri

...Petitioner

vs.

Dhondiram Arjun Dhuri and Ors.

...Respondents

Mr. Sudhir Prabhu, for the Petitioner

None for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 05, 2019

P.C.:

- . Heard Mr. Sudhir Prabhu, learned counsel for the Petitioner.
2. The challenge in this Petition is to the impugned order dated 4th April, 2015 by which the learned trial Judge has declined to stay the proceeding in Regular Civil Suit No. 135 of 2011 by resort to provision under section 10 of Code of Civil Procedure.
3. The record indicates that Special Civil Suit No. 52 of 2008 was instituted by the Petitioner *inter alia* against the Sandip Ravrane and cancellation of sale deed which came to be dismissed. The Appeal against the same also came to be dismissed. However, Second Appeal is admitted and is pending consideration.

4. The Regular Civil Suit No. 135 of 2011 has not been instituted by Sandip Ravrane but has been instituted by some other Plaintiff seeking partition of the suit properties. In such a suit Sandip Ravrane has not been implemented as one of the Defendants on the basis of sale deed which was the subject matter of Regular Civil Suit No. 52 of 2008.

5. Mr. Prabhu, learned counsel for the Petitioner contends that in suit for partition all parties are in the nature of Plaintiff. He therefore, submits that the issue involved in the second suit directly hinges on the issue of validity of the sale deed in favour of the Sandip Ravrane. For all these grounds, he submits that the second suit is required to be stayed by resort to provision under Section 10 of CPC.

6. According to me, there is no error in the view taken by the learned trial Judge for rejecting the aforesaid contention. The issue in Special Civil Suit No. 52 of 2008 and the issue in the present suit cannot be said to be one and the same. Merely because there may be one common issue. It can not be said issue in the previously instituted suit are directly and substantial in issue in

the present suit. The scope of the two suits was quite different. In this case, even if the suit for partition is decreed, it is always open to the Petitioner to contend that the share allotted to Sandip Ravrane should revert to the common hotchpotch. In case, the sale deed is in his favour but ultimately it is set aside in the Second Appeal. However, this is really not a case where the ingredients of section 10 of CPC have been made out so as to warrant the stay of the second Suit.

7. For the aforesaid reasons, this Petition is dismissed.

8. The interim order granted earlier is hereby vacated.

9. However, it is made clear that all contention of all parties are expressly left open to be decided in the suit.

10. The suit will have to be decided by the trial Court in accordance with law without being influenced of any observations made in the impugned order or this order.

(M. S. SONAK, J.)