

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8330 OF 2015**

Savita Vijaykumar Gumte

Age : 57 years, Occ : Household,
R/o. Block No. 59, B-1, Nehrunagar,
Audyogik Kamgar Sahakari
Grahanirman Sanstha, Damani
Nagar, Laxmi Peth, Solapur

... Petitioner

Vs

Shivaji Malu Harale

Since deceased through legal heirs

1-A Smt. Sushilabai Shivaji Harale

Age : 62 years, Occ : Household,
Through her Power of Attorney
Holder Kiran Vitthal Waghmode
Age : 24 years, Occ : Education,
R/o Ause Vasti, Aamrai,
Laxmi Peth, Solapur.

1-B Sou. Vimal Vitthal Waghmode

Age : 37 years, Occ : Household,
R/o, as above.

1-C Laxmi Shatrughna Khatal

Age : 34 years, Occ : Household,
R/o. Gad Darshan, Bhairuratan
Colony, Damani Nagar, Solapur.

1-D Vasanti Ramesh Shalgar

Age : 32 years, Occ : Household,
R/o. Konarnagar, Jule, Solapur,
District : Solapur.

... Respondents

Mr. Samir Kumbhakoni, Advocate for the Petitioner.

CORAM : SANDEEP K. SHINDE J.

DATE : June 26th, 2019

ORAL JUDGMENT :

1. Heard learned counsel for petitioner.
2. Though the respondents are served, they have not caused their appearance.
3. Petitioner (plaintiff) instituted Special Suit No. 156 of 2010 new no. 303 of 2012 ('previous suit' for short) for specific performance of contract dated 04.03.2005, against Shivaji Harale. Shivaji passed away on 02.05.2011 and thereupon his wife and others were brought on record as his legal representatives, as defendants. These defendants brought Regular Civil Suit No. 579 of 2012 (subsequent suit) for declaration that contract dated 04.03.2005 executed by Shivaji in favour of plaintiff, was security documents against the loan.
4. Since in both the suit contract dated 04.03.2005 is under consideration; plaintiff filed an application under Section 10 of the Civil Procedure Code for stay of suit in the subsequent suit No. 579 of 2012, which Trial Court rejected. Hence, this petition under

Article 227 of the Constitution of India.

5. Section 10 of the Civil Procedure Code reads as under :-

“No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government and having like jurisdiction, or before [the Supreme Court]”.

6. With the assistance of learned counsel for petitioner, I have perused plaint in previous and subsequent suits. Subsequent suit is brought, when previous suit was pending; issues in subsequent suit and issues in the previous suit are substantially the same; parties in

both the suits are litigating under the same title and the Court in the previous suit have jurisdiction to grant relief claimed in the subsequent suit. The defence of late Shivaji in the previous suit is that suit contract was executed to secure the loan advanced by the petitioner/plaintiff to him and Shivaji's legal representatives brought the subsequent suit for cancellation of the very contract, it being executed as a security document against loan.

7. In view of the facts of the case and for the reasons, impugned order dated 16.04.2015 passed in Regular Civil Suit No. 579 of 2012 by the Learned 11th JMFC and CJJD is quashed and set aside and application of the petitioner in the subsequent suit dated 16.12.2014 filed in Regular Civil Suit No. 579 of 2012 is allowed. In the result, Regular Civil Suit No. 579 of 2012 pending before 11th JMFC and CJJD is stayed till the decision in Regular Civil Suit No. 303 of 2012 (Previously Special Civil Suit No. 156 of 2010).

8. Writ Petition is allowed in the aforesaid terms and disposed of accordingly.

(SANDEEP K. SHINDE, J.)