

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

WRIT PETITION NO.11316 OF 2018

Suresh Balkrishna Patade @ Patil ... Petitioner
Vs.
Arun Digamar Patade @ Patil & Ors. ... Respondents
.....
Mr. Raju D. Suryawanshi for the Petitioner.
None for the Respondents.

.....
CORAM : M. S. KARNIK, J.
DATE : 16th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner. None for the respondents though they are duly served.

2. The petitioner is the original plaintiff. The petitioner challenges the order passed in Regular Civil Suit No.62 of 2013 below Exhibit 67 for stay of the suit as per Section 10 of the Code of Civil Procedure. None has appeared on behalf of respondents though they are duly served with the notice. It is the contention of the learned counsel for the petitioner that though the suit properties in the two suits viz. Regular Civil Suit No.67 of 2011 filed by the defendant No.9 are the same as in the suit filed by the plaintiff in Regular Civil Suit No.62 of 2013, the reliefs are claimed by different parties in respect of hereditary rights in

respect of temples as well as worship and festivals of god. The parties have claimed relief in different capacities and even the relief claimed in the suits are different. Regular Civil Suit No.67 of 2011 is filed for injunction restraining the defendants therein. The present petitioners are not parties to Regular Civil Suit No.67 of 2011. Regular Civil Suit No.62 of 2013 is filed by the petitioner challenging the decree passed in Regular Civil Suit No.258 of 1939 by the Civil Court of Deogad. None has appeared on behalf of the respondents though they are duly served. I find that the reliefs prayed in the suits are different and even the parties are not the same nor is it the claim that the parties are litigating under the same title. Merely because the dispute relates to the same property, in the facts of the present case, in my opinion this is not a fit case to invoke Section 10 of the Code of Civil Procedure.

3. The order passed below Exhibit 67 is set aside. Application below Exhibit 67 is rejected.

4. The petition is allowed with no order as to cost.

(M. S. KARNIK, J.)