

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

WRIT PETITION NO.6449 OF 2007

GURUMUKHDAS HARCHOMAL
GURBAKSHANI (SINDHI),
age 73 years, Occ. Business,
R/o Block No.D-3, Room No.7, Old Sindhi
Colony, Nandurbar, Tq. & District Nandurbar.

...Petitioner...
(Orig. Plaintiff.)

VERSUS

GOPAL KESHAV KOTWAL
since deceased through his L.Rs.
Suresh Gopal Kotwal,
age 67 years, Occ. Agriculture,
R/o. Near Sindhi Market,
Manik Chowk, Nandurbar,
Tq. & District. Nandurbar.

..Respondent..

...
Advocate for Petitioner : Mr.Chaitanya Deshpande h/f C
R Deshpande

Advocate for Respondent : Mr. P D Bachate

...
CORAM : V.K. JADHAV, J.
Dated : February 20, 2020
...

ORAL JUDGMENT :-

1. Heard both sides.
2. The petitioner is the original plaintiff in Regular Civil Suit No.149 of 1985. Respondent has instituted the Regular Civil Suit No.74 of 1984 in respect

aaa/-

of the same property. The petitioner/plaintiff himself had filed an application Exh.90 in Regular Civil Suit No. 149 of 1985 praying therein to stay the suit till final disposal of the Regular Civil Suit No.74 of 1984. It has been contended in the said application that the property involved in both the suits is one and the same and, as to who has made encroachment over the property, is the issue to be decided. Parties in both the suits are also the same. After hearing both the parties, the learned Civil Judge S.D., Nandurbar by order dated 8.6.1994 allowed the application Exh.90 and hearing of the suit bearing Regular Civil Suit No.149 of 1985 has been stayed till the decision of Regular Civil Suit No.74 of 1984. By impugned order dated 3.3.2007 trial court directed the present petitioner/plaintiff to proceed with the suit since Regular Civil Suit No.74 of 1984 came to be disposed off on 30.6.1997 and there is no stay from the appellate Court in connection with R.C.S. No.74 of 1984.

3. Learned counsel for the petitioner submits

aaa/-

that in connection with the judgment and decree passed in Regular Civil Suit No.74 of 1984, at present appeal bearing Second Appeal No.393 of 1998 is pending before this Court. Learned counsel submits that the Second Appeal is in continuation of the suit and, as long as the decree passed in the suit bearing Regular Civil Suit No.74 of 1984 has not attained the finality, the subsequent suit which has been stayed by the Trial Court cannot be re-opened for Trial.

4. Learned counsel for respondent has not disputed about the order passed by the Trial Court staying the subsequent suit bearing R.C.S. No.149 of 1985. Learned counsel, however, submits that once the earlier suit bearing Regular Civil Suit No.74 of 1984 is disposed off and, even the First Appeal preferred against the said judgment and decree passed by the Trial Court also came to be disposed off, the Trial Court has rightly passed the order directing the petitioner/plaintiff to proceed with the hearing of Regular Civil Suit No.149 of 1985. No interference is required. There is no

aaa/-

substance in this writ petition. Writ Petition is liable to be dismissed.

5. The counsel appearing for the parties accept that Second appeal bearing No.393 of 1998 is pending before this Court as against the judgment and decree passed in Regular Civil Suit No.74 of 1984 and, so also the judgment and order passed by the First Appellate Court in connection with the judgment and decree passed by the Trial Court in connection with Regular Civil Suit No.74 of 1984. In view of the same, if the Second appeal is pending, the same would be in continuation of the suit and as such, as long as the decree passed in Regular Civil Suit No.74 of 1984 has not attained the finality, the Trial Court cannot proceed with the subsequent suit i.e. Regular Civil Suit No.149 of 1985. The order impugned is thus liable to be quashed and set aside. Hence, following order.

ORDER

I. Writ Petition is hereby allowed.

aaa/-

- II. The impugned order dated 3.3.2007 passed by the Civil Judge Senior Division, Nandurbar below Exh.1 in Regular Civil Suit No.149 of 1985 is hereby quashed and set aside.
- III. Writ Petition is accordingly disposed off. Rule is made absolute.

(V.K. JADHAV, J.)

...