

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2988 OF 2018

Vitthal @ Vitthalrao s/o Ramesh Kharode and others
...Versus...
Ganesh s/o Subhashrao Kharode and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri C.A. Joshi, Counsel for petitioners
Shri A.B. Mirza, Counsel for respondent Nos.1 to 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 04.03.2020

1. Heard Mr. Joshi, learned Counsel for the petitioners and Mr. Mirza, learned Counsel for the respondent.
2. The grievance is that the Trial Court, by the impugned order, has stayed the suit, as filed by the petitioners/defendants, which was prior in point of time, on the application filed by the defendant Nos.1 to 3, whose suit was later in point of time. It is an admitted position that Regular Civil Suit No.7/2010 (renumbered as Special Civil Suit No.24/2015) [Shri Vitthalrao Ramesh Kharode and others ..Vs.. Ganesh Subhashrao Kharode and others] for declaration, injunction and separate possession was instituted on 27/01/2010, whereas Regular Civil Suit No.25/2010 (Kusumbai w/o Subhash Kharode and another...Vrs...Vitthalrao Ramesh

Kharode and others) for declaration and permanent injunction was instituted on 15/04/2010. It is not in dispute that the parties to the suit are same and the subject matter is also same. In such circumstances, the application under Section 10 read with Section 151 of the Code of Civil Procedure, as filed by the defendant Nos.1 to 3, for stay of the previously instituted suit, was clearly not tenable in law. The impugned order, which stays the previously instituted suit, is clearly against the mandate of Section 10 of the Code of Civil Procedure and therefore, cannot be sustained. The same is, therefore, quashed and set aside and the application under Section 10 of the Code of Civil Procedure filed by the defendants is dismissed.

3. The writ petition is accordingly allowed in the above terms. There shall be no order as to costs.

JUDGE