

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11637 OF 2019

Prabhawati Wamanrao Jadhav (Patil),
Age : 52 years, Occu. Service & Agri.,
R/o Samarth Niwas, Nath Nagar,
Pawan Colony, Latur, District Latur

PETITIONER
(Orig. Plaintiff)

VERSUS

1. Pandurang Wamanrao Jadhav,
Age : 42 years, Occu. Agri.
2. Latabai Wamanrao Jadhav,
Age : 67 years, Occu. Household
3. Sudhakar Wamanrao Jadhav,
Age : 37 years, Occu. Service & Agri.,

Sr. Nos.1 to 3 are R/o Rukmani Niwas,
Meghraj Nagar, Shahu Chuk, Latur,
Tal. and District Latur

4. Prabhawati Balasaheb Mokade,
Age : 43 years, Occu. Household,
R/o Susmrati Niwas, Kailas Nagar,
Behind Hotel Manas, Latur,
Tal. and District Latur

RESPONDENTS
(Respondent Nos.1 to 4
are original defendant
Nos. 1 to 4)

Mrs. M.A. Kulkarni, Advocate for the petitioner
Mr. V.D. Godbharle, Advocate for respondent No.1

CORAM : MANGESH S. PATIL, J.

DATE : 20.08.2021

PER COURT :

The learned Advocate for the petitioner seeks leave to delete

the name of respondent No.4. Leave is granted to delete the name of respondent No.4 at the risk of the petitioner.

2. Heard both the sides.

3. The petitioner is the original defendant No.5 in Special Civil Suit No.62/2016 impugning the order passed by the learned Civil Judge in Regular Civil Suit No.526/2017 instituted by her subsequently, whereby the learned Judge directed her suit to be stayed by invoking the provisions of Section 10 of the Code of Civil Procedure ("C.P.C.", for short), on a request made by respondent No.1, who is the plaintiff in Special Civil Suit No.62/2016.

4. Mrs. M.A. Kulkarni, learned Advocate for the petitioner would submit that though the petitioner is a party to the earlier suit, she has been claiming her exclusive right to hold possession over a portion of these properties and has claimed perpetual injunction against the respondents. Since she has been asserting her exclusive right and possession to hold these properties, she should have been allowed to continue with her suit, which was for perpetual injunction restraining the respondents from causing any interference in her possession. She would rely on the decision of this Court in the case of *Dnyanoba Balbhim Salunke Vs. Sarjerao Dhondiba Salunke; 2015(1) All.M.R.367*.

5. Mr. V.D. Godbharle, learned Advocate for respondent No.1 would

support the impugned order. He would submit that it is after the petitioner appeared in the first suit and filed her written statement that she has chosen to file the subsequent suit. The first suit is for general partition of all the immovable properties. Though the petitioner has been arrayed as defendant No.5 in the first suit, even according to her own stand in the subsequent suit filed by her, she is the second wife of common ancestor Wamanrao. Therefore, when, on her own saying, she cannot claim any right or share in the suit properties in respect of which a partition is demanded, no fault can be found with the impugned order staying her suit which is a subsequent suit.

6. I have carefully considered the rival submissions and perused the papers. As can be appreciated, there is no dispute that the suit for partition filed by respondent No.1 is first in point of time. There is also no dispute that the petitioner is defendant No.5 in that suit. As can be seen, it is a suit for general partition of the properties inherited from the common ancestor Wamanrao.

7. Again, as can be seen, the petitioner, who is defendant No.5, alongwith defendant No.1 in that suit, had filed written statement and it is thereafter that she chose to file the present suit for perpetual injunction.

8. As has been rightly noticed by the learned Civil Judge, the parties to the suit are same and even the properties are same. The substantial questions of law and facts that are likely to arise in both the suits,

are also the same. The whole purpose of making a provision like Section 10 of the C.P.C. is to avoid any conflicting decision. This is the object sought to be achieved by the Legislature and has been rightly borne in mind by the learned Civil Judge while passing the impugned order.

9. Needless to state that the petitioner has already appeared in the first suit and filed written statement and it is always open for her to raise all the contentions as against the present respondents, who are also parties to the earlier suit. It is in view of such state-of-affairs, in my considered view, there is no merit in the Writ Petition.

10. The decision relied upon by the learned Advocate for the petitioner in the case of *Dnyanoba Balbhim Salunke* (supra), as can be appreciated, was rendered in the facts and circumstances which are not akin to the facts in the matter in hand.

11. The Writ Petition is dismissed.

12. It is made clear that the observations made hereinabove are made only for the decision of the present Writ Petition and the learned Judge of the Trial Court shall not feel influenced by those.

[MANGESH S. PATIL]
JUDGE

