

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

WRIT PETITION NO.7519 /2019

Smt. Kalawati wd/o Rajaramji Sathaone
Aged about – 60 yrs, Occ- Agriculturist,
R/o- Village Dhanla, Tahsil – Mouda,
District – Nagpur.

..... **PETITIONER**
[Orig. Plaintiff]

// VERSUS //

Yashwant s/o Harishchandra Deshmukh
Aged about – 54 yrs, Occ- Agriculturist,
R/o – Village Dahegaon, Tahsil – Mouda,
District – Nagpur.

.... **RESPONDENT**
[Orig. Defendant]

Shri A. K. Neware, Advocate for petitioner
Shri G. S. Sengar, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATED : 28/09/2021

ORAL JUDGMENT :

1] Heard Mr. Neware, learned Counsel for the petitioner and
Mr. Sengar, learned Counsel for the respondent.

2] **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

3] The original plaintiff, in Regular Civil Suit No.27 of 2015
has filed a suit for specific performance, as against which, the defendant
therein had filed a Regular Civil Suit No.44 of 2015 for declaration,

possession, permanent injunction and damages. An application for clubbing both the suits was filed, in view of the fact that common issue was raised regarding the Agreement, in question, which would require recording of common evidence. The said application came to be rejected by the impugned order and the Regular Civil Suit No.44 of 2015 came to be stayed under Section 10 of the Code of Civil Procedure.

4] Both the learned counsel are agreeable that since common issue arises and common evidence would be required it would be proper that both the suits be clubbed and tried together. In fact, when this request was made there was no reason whatsoever for the learned Trial Court to have rejected the application in this regard and stayed the subsequent suit.

5] In that view of the matter, Writ Petition is allowed and the order below Exh.1 in Regular Civil Suit No.27 of 2015 is hereby quashed and set aside. The application at Exh.35 for clubbing both the suits is allowed. Both these suits shall be tried together.

Rule is made absolute in above terms. No costs.

(AVINASH G. GHAROTE, J)