

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

WRIT PETITION NO.7818 OF 2018

Mangal s/o Narayan Giri
Age; 70 years, Occ; Agril,
R/o; Kaudgaon, Tq. Kaij, Dist. Beed
At present-Prakash Nagar, Latur,
Tq. & Dist. Latur.

...PETITIONER
(Orig. Plaintiff)

VERSUS

Shankar s/o Ramkisan Chilwant,
Age; 65 yrs, Occ. Agril & Service,
R/o; Kaudgaon, Tq. Kaij,
Dist; Beed.

...RESPONDENT
(Orig. Defendant)

...
Advocate for Petitioner : Mr.Dhanure Bramhanand M.
Advocate for Respondent : Mr.Chate Vitthal M.
...

CORAM : NITIN. B. SURYAWANSHI, J.

DATE : 30th MARCH, 2022.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition takes exception to the order passed by the learned Civil Judge, Junior Division, Kaij, below Exh. 31 in R.C.S. No. 321 of 2013, thereby allowing the application filed by the respondent-defendant under Section 10 of the Code of Civil Procedure, (for short

“C.P.C.”) and staying the suit of the petitioner-plaintiff.

3. The petitioner/plaintiff has filed R.C.S. No. 321 of 2013 against the respondent/defendant Shankar Ramkisan Chilwant seeking permanent injunction and declaration that the agreement to sale dated 11.02.2003, in respect of land Gut No. 152, ad-measuring 1 H 20 R situated at Mauje Kaudgaon (hereinafter for short “Suit Property”) be set aside and since the petitioner/plaintiff is in actual possession of the suit property being owner, permanent injunction is sought against the respondent/defendant from interfering in the peaceful possession of the petitioner.

4. The respondent has filed R.C.S. No. 203 of 2013 in respect of the suit property seeking injunction against the petitioner by relying on the agreement to sale dated 11.02.2003.

5. The respondent-defendant filed application (Exh. 31) under Section 10 of the C.P.C. in R.C.S. No. 321 of 2013 contending that since both the suits pertain to the same suit property, as parties in both the suits are same and as the cause of action in both the suits is same, the subsequent suit filed by the petitioner-plaintiff bearing R.C.S. No. 321 of 2013 be stayed. The petitioner resisted the said application. The trial Court has allowed the said application and stayed R.C.S. No. 321 of 2013. The petitioner is aggrieved by the said

order.

6. Heard the learned Advocate for the petitioner-plaintiff and the learned Advocate for the respondent-defendant.

7. Learned Advocate for the petitioner-plaintiff submits that the reliefs claimed in both the suits are different. The suit filed by the respondent is simplicitor for injunction and the suit filed by the petitioner is for cancellation of the agreement to sale, therefore, the trial Court has committed an error in staying the suit filed by the petitioner. According to him, the matter in issue in both the suits is different. He further submits that before framing issues in both suits, the trial Court could not have entertained the application filed by the respondent. He also submits that admittedly the suit filed by the respondent is at the earlier point of time. He, therefore, submits that the impugned order is liable to be quashed and set aside. In support of his submission he relied on **Sairabai Sayyad Abdul Aziz deceased through her L.Rs and others vs. Abdul Rashid Abdul Majid - 2002 (3) Bom. C.R. 139** and **Shaikh Hamid Ali Nasir Ali vs. Municipal Corporation of Grater Mumbai and another - 2013 DJLS (Bom.) 5**.

8. On the other hand, learned Advocate for the respondent-defendant supports the impugned order and submits that the trial Court, in view of the provision of Section 10 of the C.P.C., is justified

in staying the subsequent suit filed by the petitioner. He therefore, urges to dismiss the Writ Petition.

9. In **Sairabai Sayyad Abdul Aziz deceased through her L.Rs** (supra) it is observed thus :

“5. If one carefully reads section 10, it will be obvious that the key words while interpreting section 10 would be, “.....having jurisdiction to grant the relief claimed.....”. Thus it is not sufficient that the parties are same or the subject-matter of the suits is same but the issues involved therein also should be same or substantially same and the relief which has been sought by the plaintiff in both the suits also should be substantially same. In fact section 10 does not contemplate an identity of issues between the two suits, nor does it require that the matter in issue in the two suits should be entirely the same or identical. What the section requires is that the matter in issue in the two suits should be directly and substantially the same, and proper effect must be given to the language used by the legislature in section 10 that the identity required is a substantial identity. There must be an identity of the subject-matter, the field of controversy between the parties in the two suits must also be the same, but the identity contemplated and the field of controversy contemplated should not be identical and the same in every particular, but the identity and the field of controversy must be substantially

the same.

One test of the applicability of section 10 of the Code of Civil Procedure to a particular case is whether on the final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. What is essential is that there must be substantial identity between the matters in dispute and parties in the earlier and latter suits.

6. In the present case at hand, the first suit filed by the plaintiff/petitioner i.e., Regular Civil Suit No. 579 of 1991 was simpliciter for injunction and the second suit, i.e., Regular Civil Suit No. 880 of 1991, filed by the plaintiff, was for recovery of possession. Thus section 10 here has got no application and it will be sheer injustice if the second suit, in which a totally different relief has been sought, is stayed just because the first suit, which is earlier in point of time between the same parties relating to the same subject-matter, is pending.”

10. If the aforesaid principles are applied to the facts of the present case, it is clear that the suit filed by the respondent i.e. R.C.S. No. 203 of 2013 is simplicitor for injunction and the suit filed by the petitioner i.e. R.C.S. No. 321 of 2013 is for declaration and cancellation of the agreement to sale dated 11.02.2003 and for permanent injunction. It is therefore clear that the matter in issue in both the suits is different. The issues in both the suits are yet to be

framed. In that view of the matter, the trial Court has committed an error in staying the subsequent suit, in which totally different relief is sought. The impugned order therefore, is unsustainable. The impugned order dated 25.01.2018 passed by the learned Civil Judge, Junior Division, Kaij, District Beed, below Exh. 31, in R.C.S. No.321 of 2013, is hereby quashed and set aside.

11. The writ petition is allowed in terms of prayer Clause "B".
12. Both the suits be clubbed together and are directed to be decided simultaneously.
13. Rule is made absolute in above terms.
14. No costs.

(NITIN B. SURYAWANSHI)
JUDGE

mahajansb/