

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15288 OF 2019

LAXMAN NIVRATTI KSHIRSAGAR
VERSUS
WANDANABAI VISHWANATH SOLUNKE AND ANOTHER

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Advocate for Petitioner : Mr. V.M.Vibhute
Advocate for Respondent No. 1: Mr. S.B. Gastgar
Advocate for Respondent No. 2: Mr. P.V. Balkhande

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JULY, 2022

ORDER :

1. The challenge in this petition is to the order dated 26.08.2019 passed by learned 2nd Joint Civil Judge, Junior Division, Nilanga, below Exhibit-36 in Regular Civil Suit No. 183/2019.

2. The petitioner/original defendant No. 2 filed application Exhibit-36 in Regular Civil Suit No. 183/2019 contending that he has filed Regular Civil Suit No. 199/2018, for specific performance of contract, perpetual injunction in respect of suit property, wherein defendant No. 1 is also defendant, so also, Laxmibai. During the pendency of that suit, Laxmibai has transferred the suit land in favour of plaintiff/respondent No. 2 (original defendant No. 1). In that suit, respondent No. 1 has

been added and she has appeared. The petitioner therefore contended that the subject matter in Regular Civil Suit No. 199/2018 and Regular Civil Suit No. 183/2019 is same and therefore, both the suits are in respect of same suit properties and the parties are also same. Since Regular Civil Suit No. 199/2018 is filed at earlier point of time, to avoid conflict in decisions, it is necessary to stay subsequent suit i.e. Regular Civil Suit No. 183/2019, under Section 10 of Code of Civil Procedure.

3. The Trial Court has rejected the application holding that Regular Civil Suit No. 199/2018 is filed by defendant No. 2 for specific performance of contract along with perpetual injunction in respect of alienation of suit property and possession of suit property is also claimed. In Regular Civil Suit No. 183/2019 the plaintiff has claimed that he is in possession of the suit property and he has sought injunction against defendants. Therefore, the Trial Court held that in Regular Civil Suit No. 183/2019 substantial question is about possession of the suit property, however, in Regular Civil Suit No. 199/2018 there is no question of possession, and therefore, the matter in issue in both the suits is not same.

4. After hearing both the learned advocate for the parties and after going through the documents placed on record and on perusal of impugned order, this Court is not inclined to interfere in the order impugned in the present petition.

5. In the peculiar facts of the present case, since the parties in both the suits are same, so also, the suit property, the interest of justice would be subserved, if both the suits are directed to be clubbed together and decided simultaneously. Hence, the following order:

ORDER

- I) The Trial Court is directed to club Regular Civil Suit No. 199/2018 and Regular Civil Suit No. 183/2019 and decide them simultaneously.
- II) With this direction the writ petition is disposed of.

[NITIN B. SURYAWANSHI, J.]