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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 10152 OF 2019

ANWAR HAJI ISMAIL DHUKKA

....PETITIONER

V/s.

VIKAS GOVIND MANJREKAR

.....RESPONDENT

Mr. Sanskar Marathe Advocate for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 19, 2022.

P.C.:

1) Impugned in the Petitioner is order dated 11/12/2018 passed by Civil Judge Senior Division, Rajapur rejecting prayer of the Petitioner for staying the Suit proceedings in R.C.S. No. 53/2011 pursuant to provisions of Section 10 of the Code of Civil Procedure, 1908.

2) Contentions of counsel for the Petitioner are, Suit property in R.C.S. No. 53/2011 which is pending on the file of Civil Judge Junior Division, Rajapur and in R.C.S. No. 67/2008 is same. In R.C.S. No. 53/2011, Respondent no. 1 herein is Plaintiff wherein prayer is for

grant of injunction whereas in R.C.S. No. 67/2008 Respondent no. 1 herein is Defendant. According to him, title of Respondent no. 1 in R.C.S. No. 67/2008 is under challenge. Unless the title is established, hearing of the Suit being R.C.S. No. 53/2011 cannot be proceeded ahead.

3) With the assistance, I have perused the pleadings in both the Suits so also nature of relief claimed. As far as R.C.S. No. 67/2008 is concerned, though prayer therein is for declaration of joint ownership by Plaintiff and Defendant nos. 2 to 21 and an injunction is sought against Respondent no. 1 herein, fact remains that till this date, there is no adjudication on the right of Respondent no. 1 declaring that he is not owner of the Suit property.

4) Merely because Suit is pending questioning the ownership of Respondent no. 1, that by itself will not attract the very ingredients of Section 10 of Code of Civil Procedure, 1908. It is the case of Respondent no. 1 in Suit being R.C.S. No. 53/2011 that he has purchased the Suit property vide registered Sale Deed dated 17/08/1889 from the Defendant in the said Suit namely Anwar Haji Ismail Dhukka. As far as the Sale Deed is concerned, said title Deed

in favour of Respondent no. 1 though questioned in R.C.S. No. 67/2008, till date, there is no adjudication on its validity. This Court is required to be sensitive to the fact that through registered document title vested in Respondent no. 1 with possession.

5) In that view, no case for interference in the order impugned is made out. Petition fails, stands rejected.

6) However, this will not preclude the parties from moving before the Principal Judge under Section 24 of the Code of Civil Procedure, 1908 for clubbing of the Suits.

[NITIN W. SAMBRE, J.]