

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

WRIT PETITION NO.15099 OF 2022

Sunil Dnyaneshwar Tapkir and Ors.

.. Petitioners

Versus

Kaluram Bhiku Tapkir and Ors.

.. Respondents

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- Dr. Uday P. Warunjikar for Petitioners
 - Mr. Chetan R. Nagare for Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 12, 2022.

P.C.:

1. Heard Dr. Warunjikar, learned Advocate for Petitioners and Mr. Nagare, learned Advocate for Respondents.
2. Perused the impugned order dated 15.09.2022 passed below Exh.83 in Special Civil Suit No.1715 of 2021.
3. The original Defendants has filed the Application under Exh.83 seeking stay of suit till the disposal of Regular Civil Suit No.675 of 2012 pending on the file of Civil Judge Junior Division, Pimpri.
4. With the assistance of both the learned Advocates, I have gone through the record of the case.
5. Perusal of plaint in Regular Civil Suit No.675 of 2012 juxtaposed with the plaint in the subsequent suit i.e. Special Civil Suit No.1715 of 2021 clearly reveals that both the suits are in respect of the same suit property and the principal as well as incidental reliefs claimed therein

are identical i.e. relating to partition of the suit property. Respondent Nos.1 to 7 in the present Petition who are Plaintiffs in the subsequent Special Civil Suit No.1715 of 2021 have not impleaded the two Plaintiffs in the earlier Regular Civil Suit No.675 of 2012 who would also otherwise be entitled to their share in partition. Learned Trial Court in paragraph No.4 has concluded that provisions of Section 10 of Civil Procedure Code, 1908 would not aid the Applicant in view of the fact that the two Plaintiffs in the earlier suit have not been impleaded as party in the subsequent suit.

6. *Prima facie* the provisions of Section 10 if are to be made applicable would involve the substantive issue pertaining to the suit property and the reliefs claimed in both the suits. It is seen that both the suits are in respect of the same property and non-joinder of the two plaintiffs in the subsequent partition suit would not defeat the purpose of the application. It is seen that all necessary parties are impleaded in the earlier suit.

7. The impugned order 15.09.2022 for above reasons is set aside.

8. The subsequent Special Civil Suit No.1715 of 2021 shall stand stayed till disposal of the Regular Civil Suit No.675 of 2012 pending before Civil Judge Junior Division, Pimpri.

9. With the above directions, Writ Petition is allowed.

[MILIND N. JADHAV, J.]