

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

WRIT PETITION NO.2009 OF 2022

Bhagubai Shankar Jarande

..Petitioner

Versus

Shankar Bhausahab Khaire

Since deceased through legal heirs

Shevantabai Shankar Khaire and Ors.

..Respondents

Mr. Pandit Kasar, for the Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATE : 8th MARCH, 2022

PC.

1. Petitioner/plaintiff in suit for partition being RCS No.72 of 2015 suffered an order under Section 10 of the CPC on the ground that the subject matter of the suit between similar parties is already subjudice in Second Appeal No.125 of 2009. The submissions of learned counsel for the petitioner are, provisions of Section 10 of the CPC ought not to have been invoked once the prayer to that effect was rejected. Further contention is, in pending Second Appeal, petitioner is not a party and as such she loses her chance to get benefit out of ancestral property as she has share in joint family property. As such, suit ought not to have been stayed. If the aforesaid submissions are appreciated, the language of Section 10 of the CPC is peremptory in nature.

2. For invoking provisions under Section 10 of the CPC, a party is not required to move before the Court, as it is always open for the Court to deal with the suit to invoke the same, provided the cause are brought to its knowledge. Rightly so, the Trial Court, in my opinion, has invoked provisions of Section 10 of the CPC. As such, no jurisdictional error could be noticed.

3. As far as the contention that petitioner is not a party to the pending Second Appeal is concerned, the petitioner has her own remedies for the same. It is not in dispute that the property viz. subject matter of the suit, which is stayed under Section 10 of the CPC, is same as that of in pending Second Appeal including that of present defendants/respondents are appellants therein. That being so, the said contention is also rejected.

4. The petition as such fails, dismissed.

5. Needless to clarify that the petitioner is at liberty to take out such other proceedings as are available and permissible in law for getting her impleaded in Second Appeal or otherwise.

[NTIN W. SAMBRE, J.]