

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

51 WRIT PETITION NO.4871 OF 2021

**BABASAHEB UDDHAVRAO GAME AND OTHERS
VERSUS
SHAHAJI UDDHAVRAO GAME AND OTHERS**

...
Advocate for Petitioners : Mr. D.B. Pokale
Advocate for Respondent No.2 : Mr. H.V. Tungar
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 25-01-2023

PER COURT :

. Heard.

2. By this petition, the petitioners challenge the order dated 16.12.2020 passed in R.C.S No. 384 of 2018 rejecting the petitioners' application under Section 10 of the Code of Civil Procedure seeking stay to the R.C.S. No.384 of 2018 in view of the previously instituted suit by the petitioners being R.C.S. No.309 of 2018.

3. The previously instituted suit of the petitioners i.e. R.C.S. No.309 of 2018 was filed seeking perpetual injunction in respect of the suit property admeasuring 13.13-R out of Survey No.213, whereas R.C.S. No.384 of 2018 which has been preferred by respondent no.1 seeking the relief of perpetual injunction against the petitioners in respect of the property admeasuring 30.27-R arising

out of the same survey number.

4. In an proceeding arising out of the injunction application filed in R.C.S. No.309 of 2018 this Court by its order dated 08.07.2019 in Writ Petition No.4686 of 2019 has prepared the sketch wherein the properties of the petitioners and the respondent no.1 were shown as distinct and separated by the portion of the land belonging to their deceased brother which was subsequently sold to the third party. In view of the concluding observations of this Court in Writ Petition No.4686 of 2019 that the two properties are separate and distinct, R.C.S No. 309 of 2018 and R.C.S No.384 of 2018 though seeking perpetual injunction against each other cannot be said to be in respect of the same property and as such the matter which is directly and substantially in issue in R.C.S .No. 309 of 2018 cannot be said to be directly and substantially in issue in respect of R.C.S. No.384 of 2018.

5. For the reasons stated above, there is no merit in the writ petition and the same stands dismissed.

(SHARMILA U. DESHMUKH, J.)