

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

WRIT PETITION NO. 2077 OF 2023

Kailash Vijaysinha Deshmukh
and another

.. Petitioners

Versus

Vilasrao Vinayak Dhanave

.. Respondent

Shri Sushant B. Choudhari, Advocate for the Petitioners.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 21ST FEBRUARY, 2023.**

FINAL ORDER :

. Heard.

2. Petitioners are aggrieved by the order dated 17th December, 2022 passed in Civil M. A. No. 131 of 2022 rejecting the petitioners' application for clubbing R.C.S. No. 662 of 2018 and R.C.S. No. 688 of 2018. R.C.S. No. 662 of 2018 has been instituted by the plaintiff/respondent in respect of land Sy. No. 6/B admeasuring 81R and relief of declaration of ownership and perpetual injunction is sought. Whereas R.C.S. No. 688 of 2018 is filed by the plaintiff/respondent seeking recovery of sum of Rs. 1,40,000/- along with due interest in respect of transaction of sale of land Sy. No. 6/A admeasuring 80R.

3. Learned counsel appearing for the petitioners submits that

it is the defence of the petitioners that both the proceedings arise out of same transaction of loan taken by the petitioners from the respondent and as such no prejudice will be caused to the respondent if these two proceedings are clubbed.

4. A perusal of the proceeding of R.C.S. No. 662 of 2018 would show that the said proceeding is for declaration of ownership of land Sy. No. 6/B. It is clearly a different property from the property i. e. land Sy. No. 6/A admeasuring 80R, which forms subject of R.C.S. No. 688 of 2018 filed for the purpose of seeking recovery of sum of Rs. 1,40,000/-. As far as parties are concerned, the petitioner No. 1 is the defendant in both the suits and the petitioner No. 2 is defendant only in R.C.S. No. 688 of 2018. Considering that no common evidence will be required to be led as subject matter of both the suits are different and considering the observations of the Trial Court that R.C.S. No. 662 of 2018 is already at an advance stage where plaintiff's evidence is over, there is no infirmity in the impugned order dated 17th December, 2022.

5. Taking into consideration that the subject matters are completely different, there is no probability of conflicting judgments being passed and also there will be no common evidence led and as such there is no reason for clubbing of these proceedings merely because defence of the petitioners is common in both the proceedings which cannot be a ground for clubbing the proceedings, especially when there is no identity of the

properties and the parties are not the same.

6. For the reasons above, the writ petition is devoid of merits and stands dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23