

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7708 OF 2022**

**BALAJI RAGHUNATH INGLE AND ANOTHER
VERSUS
ASHAWATI SURESHRAO BODHANKAR**

...

Mr. Suraj R. Bagul, Advocate for the Petitioners.

Mr. Anand P. Bhandari, Advocate for the Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 03rd JANUARY, 2023.**

PER COURT:-

1. By this petition petitioners impugn the order dated 30.08.2019 passed by the 4th Joint Civil Judge, Junior Division, Nanded below Exhibit-26 in R.C.S. No.15/2015, whereby the application for stay of the suit was allowed.

2. Petitioners herein are the original plaintiffs, who had filed a Regular Civil Suit No.15/2015 seeking declaration of ownership and perpetual injunction as against the defendant. It is the case of the petitioners that, the suit lands were purchased by the petitioners vide registered sale deed from one Raghunath Gopalal Ingale. The petitioners claim that the suit lands are ancestral joint family property of the petitioners and Raghunath Ingale and that the respondent herein, who is claiming ownership of the suit land through registered sale deed executed with the said Raghunath Ingale is not having any right, title and interest, as Raghunath Ingale has never sold or alienated the suit land in favour of the respondent.

3. The application filed by the respondent under Section 10 of the Code of Civil Procedure, 1908 states that, as the said Raghunath Ingale was interfering with the ownership and

possession of the respondent after having sold the suit land to the respondent, the respondent filed suit bearing RCS No.659/2005 for declaration of ownership and possession alongwith relief of perpetual injunction and the said suit is pending before the 4th Joint Civil Judge, Senior Division, Nanded, in which the evidence of the respondent is concluded and the matter is now posted for evidence of the Raghunath Ingale. The application of the respondent further contends that during the pendency of the suit bearing RCS No.659/2005 the said Raghunath Ingale has allegedly executed a sale deed in favour of the petitioners herein, who are his sons. As such, as a subject matter of the two suits i.e. RCS No.659/2005 and RCS No.15/2015 is essentially and substantially the same.

4. Heard the learned counsel appearing for the parties.

5. Learned counsel for the petitioners submits that, the petitioners are claiming right in the property independent of the sale deed executed by the said Raghunath Ingale in their favour, as the suit property is ancestral property. He would further submit that, the respondent had earlier filed an application seeking stay of the suit, which was dismissed by the Civil Judge, Junior Division, Nanded and therefore, the subsequent application claiming the same relief would not be maintainable.

6. Per contra, the learned counsel for the respondent supported the impugned order and submitted that in view of the specific provisions of Section 10 of the Code of the Civil Procedure, since the subject matter of the two suits is similar, it would lead to conflicting judgments being passed and hence, the impugned order staying the subsequent suit ought not to be interfered with.

7. I have considered the rival submissions of the parties.

8. The subject matter of RCS No.15/2015 *inter alia* is ownership of the land bearing Gut No.230 admeasuring 2H 31R situated at Kamtha (Kd.), Tq. & Dist. Nanded. Perusal of the plaint of RCS No.15/2015 shows that the petitioners are claiming ownership in the suit property by reason of firstly it being ancestral property and secondly by way of registered sale deed of the year 2006. It is not in dispute that, RCS No.659/2005 has been filed by the respondent against the said Raghunath Ingale for declaration of ownership and injunction in respect of the same land i.e. Gut No.230 admeasuring 2H 31R, which is also subject matter of RCS No.15/2015. After the said RCS No.659/2005 has been filed, the alleged sale deed in the year 2006 has been executed between Raghunath Ingale and the petitioners herein.

9. The provisions of Section 10 of the Code of the Civil Procedure mandates that “No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending”. Although, the petitioners claimed independent right by virtue of property being an ancestral property, perusal of the plaint shows that right has also been claimed vide the registered sale deed executed by the petitioners with the said Raghunath Ingale and therefore, it cannot be said that the petitioners are not claiming through Raghunath Ingale, who is also a defendant in the earlier suit. The factual position evidences that, the subsequent suit is in respect of the same suit property and is between the same parties. As such, if the subsequent suit is permitted to continue, there is a

possibility of conflicting judgments being passed. In the present case since there is identity of matter in issue in both the suits, the subsequent suit filed by the petitioners is required to be stayed. As regards the submissions of the petitioners that there was a previous application under Section 10 of the Code of Civil Procedure, which was dismissed, the said application is not produced on record nor the order alleged to have been passed on the said application. Perusal of the impugned order shows that, the previous application was not argued by the respondent and hence, appears to have been dismissed for default. As the said application was not argued on merits, it cannot be accepted that the subsequent application is barred by any provisions of law.

10. Considering the aforesaid, in my view, the writ petition is devoid of merits and is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE