

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

70 WRIT PETITION NO.12727 OF 2022

**DAGADUBAL ALIAS DAGADU JANAKU DHARME
VERSUS
RAMBHAU DHONDIRAM DHARME AND OTHERS**

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Advocate for Petitioner : Mr. Dattatray K. Kulkarni
Advocate for Respondent Nos. 1 to 5 : Mr. P. M. Shinde and
Ms. Priyanka Shinde

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 08-02-2023

PER COURT :

. Heard.

2. The petitioner is aggrieved by the order dated 08.09.2022 whereby the respondent's application for stay of the proceedings bearing R.C.S. No.177 of 2022 under Section 10 of the Code of Civil Procedure (hereinafter, in short 'Code') came to be allowed. Respondent no.1 had instituted Special Civil Suit No.386 of 2022 seeking relief of cancellation of the sale deed of the year 2015 purportedly executed between the respondent no.1 and the petitioner and in the alternative for recovery of the balance consideration and for an order of perpetual injunction restraining the petitioners from interfering with the possession of the respondent no.1 in respect of the suit property in the Special Civil Suit No. 386 of 2022. A positive

assertion has been made by the respondent no.1 that the petitioners had undertaken that after the remaining consideration amount will be paid, they will take the possession of the suit land. It is therefore apparent that on the basis of the possession the relief of perpetual injunction restraining the petitioners from interfering with the possession has been sought.

3. In the year 2022, Regular Civil Suit No. 177 of 2022 came to be instituted by the petitioners against the respondent no.1 and 4 others seeking perpetual injunction in respect of the same suit land which found the subject matter of Special Civil Suit No. 386 of 2022.

4. Section 10 of the Code provides 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, where such suit is pending in the same or any other Court having jurisdiction. The said provision has been brought on the statute book in order to avoid any conflicting judgments. In the present case, the respondent no.1 in a previously instituted suit is also claiming a relief of perpetual injunction based on possession and in the subsequent suit which has been filed as

R.C.S. No.177 of 2022, the relief of perpetual injunction in respect of the same suit land is being sought by the petitioners.

5. In such circumstances, the provisions of Section 10 of the Code apply as the matter in issue in the subsequent suit is also directly and substantially in issue in the first suit i.e. Special Civil Suit No.386 of 2022. In my view, the addition of other four parties as defendants in R.C.S. No.177 of 2022 will not take the suit out of the provisions of Section 10 of the Code as the subject matter is directly and substantially in issue in Special Civil Suit No. 386 of 2022.

6. The trial Court after considering the averments in both the proceedings have come to a definite conclusion that the provisions of Section 10 apply and then accordingly allowed the application. I do not find any infirmity in the order passed by the trial Court.

7. The impugned order does not deserve any interference and the writ petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)