

AGK

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

WRIT PETITION NO.13157 OF 2023

Sambhaji Ramu Handiphod

... Petitioner

V/s.

Raju Tamanna Kengar

... Respondent

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Mr. Padmanabh D. Pise i/by Padmanabh Associates for
the petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 26, 2023

PC.:

- 1.** The challenge in this writ petition under Article 227 of the Constitution of India is to the order dated 6 December 2022 passed by the Trial Court rejecting petitioner's application under Section 10 of the Code of Civil Procedure, 1908.
- 2.** The petitioner filed Regular Civil Suit No.194 of 2019 seeking redemption of mortgage in relation to agreement to sell dated 11 June 2012.
- 3.** The respondent herein filed Regular Civil Suit No.22 of 2021 seeking specific performance of oral agreement to sell dated 25 January 2012.
- 4.** Therefore, the issue in the first suit will be independent of issues in the subsequent suit. The essential issue in first suit will be

in relation to the nature of transaction between the parties. However, in the subsequent suit the plaintiff needs to prove oral agreement to sale. Therefore, the nature and quality of evidence in both suits would be different. There is no commonality of issues in both the suits. Therefore, rejection of application under Section 10 of the Code of Civil Procedure, 1908 cannot be faulted.

5. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)