

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 2290 of 2018

Rameshwar S/o Kisan Belokar

Versus

Smt. Kausalyabai Wd/o Kisan Belokar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.I.Jain, Advocate for the petitioner.

Shri V.B. Rathi, Advocate h/f. Shri P.B. Patil, Advocate
for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 12th JUNE, 2023.

In this writ petition, Order Below Exhibit 20 filed for staying the suit namely Regular Civil Suit No. 14 of 2017, dated 8th December, 2017, passed by learned Civil Judge, Junior Division, Nandura, District Buldhana, rejecting the aforesaid application, is under challenge.

2. Shri Jain, learned counsel for the petitioner submits that the suit filed by the petitioner vide Regular Civil Suit No. 2 of 2017, was for declaration that the plaintiff/petitioner is the owner of the suit property in pursuance to the will deed dated 6th March, 2013, executed by deceased Kisan Bolekar, father of the petitioner.

3. It is submitted that, subsequently Regular Civil Suit No. 14 of 2017 was filed by the mother of the petitioner, seeking cancellation of will-deed dated 6th March, 2013. He therefore, submits that the issue in the both the suits are substantially identical. It is submitted that despite the same the learned trial Court has erroneously rejected the application. Accordingly, he prays for quashing and setting aside the impugned order.

4. On the other hand, Shri Rathi, learned counsel for the respondent points out that, in the subsequent suit plaintiff is the mother of the petitioner who was not party to the previous suit filed by the petitioner. He further points out that the sister was also not made a party to the said suit filed by the petitioner, knowing well that the mother and sister are having right and interest in the suit property. He, therefore, submits that Section 10 of the Code of Civil Procedure will not attract as issues and parties are different in both the matter.

5. In light of rival contentions of the parties, I have perused the record and the impugned order.

6. From the record, it is not in dispute that previous suit namely Regular Civil Suit No. 2 of 2017 was filed by the petitioner against the brother Mahadeo

and his son Yogesh, wherein he sought declaration that he became owner by virtue of will-deed dated 6th March, 2013, executed by deceased father Kisan.

7. While justifying that as to why the mother and sister were not made party to the said suit, it is pleaded that the mother and sister are not related and concerned with the suit property.

8. In the subsequent suit filed by the mother, namely Regular Civil Suit No. 14 of 2017, the petitioner is defendant no.2, whereas, the brother and sister of the petitioner are defendant nos. 1 and 3 respectively. The mother has filed the suit for cancellation of will-deed dated 6th March, 2013.

9. Thus, considering the above referred facts, it cannot be said that the issue in subsequent suit directly and substantially is the same and the parties are also same, to attract Section 10 of the Code of Civil Procedure.

10. In the circumstances, I do not find any illegality committed by the trial Court in rejecting the application filed by the petitioner under Section 10 of the Code of Civil Procedure for staying in Regular Civil Suit No. 14 of 2017. Accordingly, it is dismissed.

[ANIL S. KILOR, J.]