



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

WRIT PETITION NO.5771 OF 2022

SANJAY @ SANJEEV GOVINDRAO LABHE

VS

ASHOK NAMDEORAO INGALE

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

Court's or Judge's Order

Shri K.R. Lule, Advocate for the Petitioner/s

Shri M.P. Dhruv, Advocate for the Respondent-sole

CORAM : ANIL S. KILOR, J.

DATE : 25.09.2023

1. Heard.
2. The order dated 22.08.2022 passed by the 5th Jt. Civil Judge Junior Division, Wardha in Regular Civil Suit No.178 of 2022, rejecting the application Exh.10 filed by the petitioner/defendant for dismissal of the suit as it being barred under Order 9 Rule 9 of the Code of Civil Procedure(CPC), is under challenge in this writ petition.
3. It is the case of the petitioner that, after dismissal of the first suit on 15.04.1998, the second suit claiming the same relief, needs to be dismissed under Order 9 Rule 9 of the CPC as there is a bar from bringing a fresh suit in respect of a same cause of action.
4. The learned trial Court while rejecting the application Exh.10, has observed thus:

“14. After perusal of plaint of earlier suit bearing no. RCS 259/1990 it seems that plaintiff had claimed relief of declaration along with mandatory and permanent injunction in respect of malgujar lane situated between the house of the plaintiff and the defendant. In the subsequent suit the plaintiff has claimed relief of permanent injunction. It is settled law that if, there is a continuous cause of action, then second suit would not be barred. In the present case in hand, earlier suit was for injunction also. Seeking of an injunction indeed, is a continuous cause. If similar threat comes subsequently, in that event subsequent suit will not be bared.

15. Present suit is filed by the plaintiff for permanent injunction and not for declaration. Therefore, as to whether the cause of action for filing both the suits are one and the same or different , has to be decided only after recording the evidence. Therefore, I am of the view that the objection raised by the Ld. Advocate for the defendant for dismissal of the suit as per provision of order 9 rule 9 is not sustainable. From all above, it is clear that the present application is liable to be rejected. Hence, I answer issue no.1 to 2 in the negative. ... ”

5. After considering cause of actions in both the suits and also considering the pleadings, I am of the opinion that no error has been committed by the learned trial Court in recording the above referred observations and rejecting the application Exh.10.

6. In the circumstances, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]