



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

WRIT PETITION NO.12565 OF 2023

Aniruddh Govindrao Joshi,
Age: 44 Years, Occu.: Agril.
and Law Practice,
R/o.: Shastri Nagar, A.PO. and
Taluka: Selu, Dist. Parbhani

.. Petitioner

Versus

1. Ashok s/o. Gangadhar Sasode,
Age: 47 Years, Occu.: Business,
R/o.: Near New High School,
Shivaji Nagar, A.PO. and Tal. Selu,
Dist.: Parbhani. Pin 431503

2. The State of Maharashtra,
Through Secretary Revenue,
Mantralaya, Mumbai

.. Respondents

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Advocate for the Petitioner:
Party In Person – Mr. Aniruddh G. Joshi
Advocate for Respondent No.2:
Mr. Arvind S. Deshmukh & Mr. S. A. Deshmukh

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	02.05.2024
Pronounced on:	21.08.2024

ORDER:

1. By the present petition the petitioner challenges the order dated 07.01.2022, below Exhibit 15 in Civil Suit No.116 of 2019, passed by the Joint Civil Judge Junior Division, Court No.2, Sailu, Dist. Parbhani, whereby the application filed by the petitioner under Section 10 read with Section 151 of the Code of Civil Procedure, 1908 for stay of the suit is dismissed by the civil court.

2. The case in brief in the instant petition is as under.

A] The petitioner herein / plaintiff has filed civil suit against the respondent herein / defendant bearing Regular Civil Suit No.37/2018 claiming relief of eviction and recovery of possession of the suit property i.e. Plot Nos.591, 591/1 situated at Shivaji Nagar, Selu under Section 16 of the Maharashtra Rent Control Act, 1999. R.C.S No.37 of 2018 is filed on 17.04.2018 and it is pleaded in the suit that, the defendant sold the suit property to the plaintiff / petitioner for valid consideration by execution of a sale deed. The mutation entries are also carried out and on the same day the defendant requested the plaintiff to allow him to live in the suit property as a tenant for eleven months. The plaintiff in good faith allowed the defendant and in furtherance the defendant entered into

a leave and license agreement with the plaintiff executed and signed the agreement dated 31.08.2017. The defendant did not pay the rent to the plaintiff rather the defendant issued notice to the plaintiff and disputed the title of the plaintiff. As such, the suit under Section 16 of the Maharashtra Rent Control Act is filed for eviction of defendant before the CJJD at Selu.

B] Thereafter, respondent herein filed Regular Civil Suit No.116 of 2019 before the civil court i.e. the CJJD, Selu seeking following reliefs:

“ Hence prayed

It is therefore prayed that, suit of the plaintiffs may kindly be decreed with costs as under:

1] Declaration to the effect that sale deed bearing day book No.2563 dated 31.08.2017 executed by plaintiff in favour of defendant in respect of Municipal House No.591 and 592/1 adm. East-West 20 feet, South-North 30 feet covered with zinc sheet and remaining open space bounded as East: Kalbande, West: Muktabai; South: Babu Kale and North: Raod, be declared in effective, in operative, null, void and cancelled.

2] Issue perpetual injunction restraining defendant not to interfere or disturb the plaintiff from enjoying his peaceful possession over the house as mentioned in claim clause No.1.

3] Any other appropriate relief which Hon'ble Court may deem fit it necessary may kindly be granted in favour of plaintiff."

C] The petitioner herein, filed an application in Regular Civil Suit No.116 of 2019 under Section 10 read with Section 151 of CPC seeking stay in the subsequently filed civil suit bearing no.116 of 2019. It is contended by the applicant that the suit property in both the matters is identical so also the parties are same and that the findings recorded in the earlier civil suit will have a bearing on the subsequent civil suit and, as such, to avoid conflict of judgments, the subsequently instituted civil suit by the respondent bearing no.116 of 2019 be stayed. The court on considering the application and reply filed therein and on perusal of the suit, observed that, the relief claimed by the petitioner in R.C.S. No.37 of 2018 is for eviction and recovery of possession under the Rent Control Act, whereas the relief claimed by the respondent herein in the RCS No.119 of 2019 is for declaration and perpetual injunction. The court further held that although the parties are not claiming the same reliefs, it would be appropriate to try both the suits simultaneously for proper adjudication.

3. Challenging the impugned order passed by the trial court, the petitioner herein, who is *party in person* submits that the petitioner herein has filed prior suit before the same court seeking eviction of the respondent herein as being tenant of the suit property on the grounds mentioned in the eviction suit. Subsequently, instituted suit by the respondent herein claiming declaration of ownership over the same suit property needs to be stayed as there is a possibility of conflicting judgments and the issue of ownership as also the issue of landlord-tenant relations is an issue in the earlier instituted proceedings before the civil court.

4. Per contra, learned counsel for the respondent herein submits that the issue in both the matters are not identical. The suits are covered under different provisions of law; one is covered under the Maharashtra Rent Control Act and the other by the Specific Relief Act. It is submitted that the Rent Control court cannot grant declaratory reliefs and for that purpose learned counsel relied upon the Judgment of this court in the case of **Rahul Subhash Bothra Vs. Karjala Ashalata Naidu, Civil Writ Petition No.2281 of 2020, dated 05.08.2020.**

5. As regards the law on Section 10 of the CPC, the Hon'ble Supreme Court in the case of **National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara**, AIR 2005 SC 242, has held as under,

"8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical.

10. As stated above, Section 10 CPC is referable to a suit instituted in a civil Court, The proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court. They are not the Courts of

concurrent jurisdiction. In the circumstances, Section 10 CPC has no application to the facts of this case.”

6. This court in the case of **Rahul** (supra) has held that the jurisdiction of both the courts before whom the suits are pending should hold the same jurisdiction and if the jurisdictions are different then the suit cannot be stayed. In the case of **Rahul** (supra) this court at para 7 has observed as under:

“7. In my opinion, the learned Trial Judge has overlooked the above crucial position in law and has proceeded to pass the impugned order as if the jurisdiction of both the Courts was at par when in fact the jurisdiction of both these Courts was completely distinct and different. The reliefs prayed for in the suit in question also stands on a different footing and distinct from the respondent’s declaratory suit. For the above reasons, the petition needs to succeed. The impugned order is accordingly set aside. Ordered accordingly”

7. Coming to the facts of the instant case relying on the law in the case of **Rahul** (supra), it is to be noticed that the prior suit is filed under the Maharashtra Rent Control Act seeking eviction of tenant, whereas the subsequent suit is filed for declaration that the sale deed executed by the plaintiff in favour of the defendant is null and void is filed before the civil court in exercise of its ordinary original jurisdiction.

8. Since, reliefs prayed in both the suit stands at different footings and are distinct, Section 10 of the CPC cannot be applied and the subsequent suit cannot be stayed. The trial court has also given directions that both the suits be proceeded simultaneously.

9. I see no error in the order passed by the civil court. As such, the writ petition is dismissed.

[ARUN R. PEDNEKER, J.]

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