



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12435 OF 2024

Shital Nandkumar Suryawanshi

VERSUS

Anand Kishanrao Lohkare And Another

• Mr. S. B. Madde, Advocate for the Petitioner

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 19, 2024

PER COURT :

1. Petitioner i.e., Original Defendant in RCS No. 715/2023 has filed application under Section 10 CPC for stay of the suit and since the said application is rejected by the Trial Court, this Petition is filed.

2. Record indicates that the Petitioner is Defendant in RCS No. 715/2023 filed by the Respondent No. 1. The suit is for injunction restraining the Defendant i.e., Petitioner herein from obstructing possession of the Plaintiff in respect of the suit property in any manner. Prior to this suit, suit bearing no. 343/2023 came to be filed at the instance of the wife and the children of the present Petitioner. The said suit is for partition and possession.

3. Learned Counsel for the Petitioner submits that the subject matter of both suits is same and, therefore, by applying provisions of Section 10 CPC subsequent suit deserves to be stayed.

4. Perusal of the record indicates that the suit filed by the wife and children of the Petitioner bearing RCS No. 343/2023 though is in respect of same property, however, is for partition and separate possession of the suit property. As against this, the suit filed by Respondent No. 1 bearing RCS No. 715/2023 is filed by the purchaser against Petitioner who is vendor of the subject property. The relief claimed therein is injunction restraining Petitioner from causing interference in the possession of the Plaintiff in the suit property in any manner whatsoever. Before considering provisions of Section 10 CPC, it is necessary to record that the Petitioner herein is a vendor of the subject property which is admittedly sold to Respondent No. 1. The suit filed by the wife and children of the Petitioner is not resisted by the Petitioner and, therefore, this Court finds that this

could be a case of collusive suit between Petitioner and wife and children of the Petitioner.

5. Section 10 CPC prohibits a Court from proceeding 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. So what is material is the issue involved in the both suits not the property. Admittedly, the suit for partition is filed by the wife and children against the Petitioner and as such, issue involved in the suit different than the one is sought to be contested by the Respondent No. 1 by him. Learned Trial Court has rightly taken into consideration the said difference in the issues involved in both suits.

6. Having regard to the aforestated facts, this Court finds no perversity in the impugned order. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)