



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13950 OF 2024

Bhagwat Narsing Aradwad
and Another

...Petitioners

Versus

Shivanand Baburao Chame & Another ...Respondents

• Mr. A. N. Irpatgire, Advocate for the Petitioners

CORAM : R.M. JOSHI, J

DATE : DECEMBER 19, 2024

PER COURT :

1. Petitioners are Original Defendant Nos. 2 and 3 and being aggrieved by the impugned order passed below Exh. 105 in RCS No. 57/2012 under Section 101 of Code of Civil Procedure and rejection thereof by the Trial Court, has preferred this Petition. Against the said decree passed in suit, Appeal being RCA No. 149/2014 is came to be decided.

2. Respondent No. 1 - Shivanand filed suit bearing RCS No. 57/2012 for possession of the suit property with specific prayer that sale deed dated 27.04.1995 is not binding to the extent of the land of the Plaintiff. There is no dispute about the fact that

sister of Shivanand, namely, Virangana Baburao Chame had filed suit for partition bearing RCS No. 583/2002 wherein the validity of the sale deed in question was under challenge to the extent of the Plaintiff therein. The said suit came to be decreed. It is thus contention of the Defendant Nos. 1 and 2 herein that the present suit is barred by Section 10 of CPC.

3. Learned Counsel for the Petitioners submits that there was a previous suit filed by sister of Respondent No. 1/Original Plaintiff being RCS No. 583/2002 for partition and also declaration of the subject sale deed to be not binding on her and as the said suit is decreed by the Trial Court, the provisions of Section 10 of CPC would apply. It is his submission that in the aforesaid fact, the learned Trial Court ought to have allowed application Exh. 105.

4. In order to appreciate the contention of the Counsel for the Petitioners, it is necessary to take note of Section 10 of CPC, which reads thus:

Section 10 - Stay of suit

No Court shall proceed 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, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

A bare perusal of the said provision indicates that the Court is precluded from proceeding with 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, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court.

5. Admittedly, previous suit was filed by sister of the Respondent No. 1 wherein there was no declaration sought nor granted in respect of the sale deed in question being not binding on any other Defendants except for the Plaintiffs therein. Even it is not the case of the Petitioners that in the said suit sale deed was held to be not binding on the share of the present Respondent No. 1/Original Plaintiff. In

such circumstances, when the Plaintiff has filed suit with specific contention that the sale deed was not binding to his share, the issue involved in the subsequent suit is different than the one was involved and decided by the Trial Court.

6. It is pertinent to note that the suit is filed in the year 2012. The judgment and decree came to be passed in RCS No. 583/2002 and RCA No. 149/2014 was filed and which came to be decided. Thus, no suit is pending nor the first Appeal is pending in order to even otherwise justify the present Petitioners to raise objection to the maintainability of the suit under Section 10 of the CPC. Apart from this, record indicates that though parties in the both suits are same, in RCS No. 583/2002 the issue with regard to the validity of the sale deed no. 4213/2002 in respect of house property no. 202 was in question. Whereas, in the suit filed by Respondent No. 1, sale deed in respect of property bearing Gut No. 42 vide sale deed no. 1407/1995 is subject matter of the suit. Thus, it cannot be said that issues involved in both suits are directly and substantially same.

7. This Court, therefore, is of the view that the filing of the present Petition is nothing but an abuse of process of law. Hence, Petition stands dismissed with cost of Rs. 5,000/- (Rupees Five Thousand Only) payable to the High Court Bar Association, Bench at Aurangabad. The cost be paid within a period of four weeks from today.

(R.M. JOSHI, J.)