



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

WRIT PETITION NO. 13332 OF 2024

NIRMALA NIMBA NIKAM AND ANOTHER
VERSUS
NATHU MANGU NIKAM AND ANOTHER

Mr. U. S. Patil, Advocate for petitioners

CORAM : R. M. JOSHI, J.

DATE : 06th December , 2024

PER COURT :-

1. This petition takes exception to order passed below Exh. 59 in R.C.S. No. 17/2020, whereby the original defendant/petitioner has sought the said proceeding to be heard and decided along with R.C.S. No. 4/2022.

2. Perusal of the record indicates that suit were filed by the petitioner and respondents bearing R.C.S. No. 4/2022 and R.C.S. No. 17/2020 respectively. Suit filed by respondent bearing R.C.S. No. 17/2020 is for simplicitor injunction claiming possession over the suit property whereas R.C.S. No. 4/2022 filed by the petitioner seeks relief of declaration and mutation entry so also, declaration for the suit property is a joint family property. In this suit injunction is also sought by claiming possession of the property.

3. It is thus clear that the issue of possession of the suit property is contested before the trial Court in the suit filed earlier in time bearing R.C.S. No. 17/2020. In so far as other reliefs are concerned, the outcome of R.C.S. No. 17/2020 has no bearing thereon, on decision of R.C.S. No. 4/2022.

4. Apart from this, the record indicates that the Principal District Judge, Jalgaon had passed order in June, 2023 directing the same judge to decide both suits. It seems that thereafter petitioner has not taken any steps to conduct the suit filed by him for its decision simultaneously with suit of respondents. No party can be permitted to take benefit of its own wrong. There is no reason shown due to which the matter could not be proceeded with for a year after its transfer. In the peculiar facts and circumstances of the case, as such, no fault can be found with the order passed by the learned trial Court.

5. Though, both suits are in respect of the same property, the issues involved therein are independent and different hence, there is no perversity in the order impugned. Petition is dismissed.

(R. M. JOSHI, J.)

bsj