

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9734 OF 2024

Madhavi Uday Kulkarni & Ors.

.. Petitioners

Versus

~~Sakahram Govind Kulkarni~~

(since deceased) through his legal heirs

Manda Sakharam Kulkarni & Ors.

.. Respondents

- Mr. P.D. Dalvi for Petitioners

CORAM : MILIND N. JADHAV, J.

DATE : JULY 30, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 29.07.2024.
3. It is argued by Mr. Dalvi that in the previous Suit being RCS No. 297/2010 a third party had sought declaratory and injunctive reliefs against Defendants therein. One of the Defendants therein was Mr. Sakharam Govind Kulkarni. He has since demised. He would next submit that the Respondents herein are his legal representatives. He would submit that only after determination of the precursor Suit proceedings, any legal rights of the present Respondents shall be determined or otherwise in the Suit property in so far as present Respondents are concerned. He would submit that Suit property in both the Suits is the same and that is the reason why the Petitioners

filed Application under Section 10 of the CPC for stay of the second Suit. The learned Trial Court has rejected the said Application and not found favour with the Petitioners. Mr. Dalvi would submit that if the Plaintiffs in the previous Suit succeed against the Defendants therein with respect to the Suit property, the Defendants will have no cause of action in the second Suit which has been filed. He would submit that the Respondents have also been impleaded in the first Suit pursuant to demise of Mr. Sakharam G. Kulkarni as his legal heirs therein. In the above background, the Application filed under Section 10 was therefore filed by the Petitioners in the second Suit. As seen above, first Suit is RCS No. 297/2010 whereas second Suit is RCS No. 317/2010. Petitioners are the Defendants in the second Suit and they filed Application below Exh. 133 which is rejected by virtue of the impugned order.

4. *Prima facie* Mr. Dalvi appears to be right. An arguable case is made out by Mr. Dalvi for issuance of notice, stay to the impugned order as also proceedings before the learned Trial Court. Hence, impugned order dated 12.04.2024 passed by the learned Trial Court rejecting the Application below Exh. 133 filed under Section 10 of the CPC is stayed in the meanwhile. Learned Trial Court is directed not to proceed with RCS No. 317/2010 until the present Writ Petition is determined by this Court.

5. In the meanwhile, issue notice to the Respondents made returnable on 13.08.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners

6. Respondents are directed to remain present either by themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

7. Stand over to **13th August, 2024.**

[MILIND N. JADHAV, J.]

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