



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

40 WRIT PETITION NO. 1839 OF 2024

DHANRAJ SHRIRANG PHAD AND OTHERS
VERSUS
LAXMAN RAMKISAN NAGARGOJE

.....

Mr. Avinash A. Phad, Advocate for the Petitioners

CORAM : R. M. JOSHI, J.

DATE : 3rd FEBRUARY, 2025

PER COURT :-

1. Petitioners/original defendants in R.C.S. No. 183/2019 being aggrieved by order passed below Exhibit 43 refusing the request made by the defendants for stay of the suit under Section 10 of the Code of Civil Procedure in view of the pendency of the previous suit bearing R.C.S. No. 57/2016 executed for the same matter in issue.
2. Respondent/original plaintiff in R.C.S. No. 183/2019 is duly served with the notice of this petition. Absent. This indicates that he has no inclination to oppose the application.
3. Petitioners/ defendants filed application (Exhibit 43) before the Trial Court under Section 10 the CPC for stay of the suit being R.C.S. No. 183/2019 in view of the pendency of the suit being R.C.S. No. 57/2016 between the same parties and in respect of the same issues.

The Trial Court rejected the said application by observing that the relief claimed in both suits are different. It was further observed that the issues in previously instituted suit and present suit are not substantially the same.

4. Learned counsel for the petitioners had drawn attention of the Court to the plaint in R.C.S. No.57/2016 wherein there is specific averment of the plaintiffs that the sale deed executed in favour of defendants therein is by fraud. There is further averment about execution of sale deed without handing over of the possession of the suit land. With these averments a relief of partition and separate possession is sought against the other defendants so also relief of declaration of sale deed with present respondent that the same is not binding on the share of the plaintiff.

5. At this stage it would be relevant to take note of Section 10 of the Code of Civil Procedure;

"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] [Substituted by Act 2 of 1951, Section 3, for " the States" .] established or continued by [the Central Government] [* *] and having like jurisdiction, or before [the Supreme Court]*

Explanation .-The pendency of a suit in a foreign Court does not preclude the Courts in [India] [Substituted by Act 2 of 1951, Section 3, for " the States" .] from trying a suit founded on the same cause of action."

. This provision shows that the subsequently instituted suit between same parties or even by parties under whom they claim litigating and where matter in issue is directly and substantially in previously instituted suit, subsequent suit cannot be allowed to be proceeded with, during pendency of earlier suit. Thus, in case these conditions are satisfied subsequent suit must be stayed.

6. In this backdrop the respondent filed fresh suit being R.C.S. No. 183/2019 for seeking relief of injunction against the petitioners herein. Pertinently instituted suit Such between parties being R.C.S. No. 57/2016, is pending. *Prima facie* perusal of pleadings in R.C.S. No. 57/2016 it is indicates that plaintiff therein have specifically averred about there being no previous partition between the plaintiff and defendant nos. 1 to 3 therein. Similarly, it is contended that though sale deed is claimed to have been executed by defendant no.1 i.e. father of plaintiff therein, there is it is alleged to have been obtained by fraud. There is also specific averment with regard to the possession of the suit land being with plaintiff. The suit was resisted by the defendant nos. 4 i.e. respondent herein claiming possession of the suit property. Thus, the

issue involved in the previously instituted suit is as to who is in the possession of the subject property i.e. petitioners or respondent herein. As such the subject matter of both suits is same. Trial Court therefore have committed error in not considering the pleadings in both suits. There ought to have been a finding that fresh suit covers the matter in issue which is directly and substantially issues in a previously instituted suit.

7. In view of above discussion, impugned order cannot sustain and hence set aside. Application Exhibit 43 filed in R.C.S. No. 183/2019 stands allowed. R.C.S. No. 183/2019 stands stayed till the decision of R.C.S. No. 57/2016.

(R. M. JOSHI, J.)

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