



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

WRIT PETITION NO. 7833 OF 2025

Babasaheb Bhagwanrao Baglane .. Petitioner

Versus

Uddhav Ramchandra Ubale .. Respondent

Shri Hrishikesh V. Tungar, Advocate for the Petitioner.
Shri Shriram V. Deshmukh, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.
DATE : 08TH JULY, 2025.

FINAL ORDER :

. This petition is directed against order dated 19.06.2025 passed below Exhibit 26 by the learned 03rd Joint Civil Judge Junior Division, Beed in R.C.S. No. 787 of 2024 refusing to dismiss the suit. The petitioner is original defendant and the respondent is original plaintiff, who has filed R.C.S. No. 787 of 2024 for declaration and injunction.

2. By way of application Exhibit 26, petitioner sought dismissal of the suit contending that previously R.C.S. No. 538 of 2022 was filed by Ashok Sakharam Nirmal against the petitioner for declaration and injunction in respect of self same subject matter. In that suit a power of attorney was submitted by the plaintiff - Ashok appointing the respondent Udhav as attorney. The then plaintiff Ashok executed sale deed in favour of the respondent/attorney on 07.03.2024 transferring the suit land. A

pursis at Exhibit 22 was submitted on 12.12.2024 by attorney stating that plaintiff did not desire to continue with the suit. On 09.01.2025, suit was disposed of as withdrawn in view of pursis at Exhibit 22. As respondent who was attorney filed present suit for same relief on 19.12.2024 showing cause of action of 01.12.2024.

3. Petitioner contested the suit filed by the respondent by filing written statement. By application Exhibit 26, it was contended that the suit is not tenable because it was for the self same relief and on self same cause of action. Earlier suit is stated to have have been withdrawn without any liberty, hence it is against Order XXIII Rule 1 (4) (a) and (b) of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C. P. C."). Application is contested by the respondent. Same is rejected by the impugned order.

4. Learned counsel for the petitioner Mr. Tungar submits that earlier suit was fraudulently withdrawn by the respondent, who was acting as an attorney. It was not disclosed that he himself purchased the suit land. Pursis Exhibit 22 was not signed by the then plaintiff – Ashok. Earlier suit was disposed of as withdrawn without granting any liberty to file subsequent suit. It is contended that subsequently filed suit is against Order XXIII Rule 1 (4) (a) and (b) of the C. P. C. No recourse was taken to Order XXII Rule 10 of the C. P. C. It is further submitted that subsequently filed suit on fresh cause of action which arose on 01.12.2024, when earlier suit was pending, is untenable. It is

further submitted that the respondent is stepping in the shoes of his vendor, who was plaintiff of the earlier suit and hence he is a purchaser *pendent lite* and cannot prosecute any independent suit in absence of permission to that effect granted in earlier suit.

5. Learned counsel for the petitioner relies on the judgments of the Supreme Court, this Court and the Allhabad High Court in the matters of Guruswami Nadar Vs. P. Lakshmi Ammal (D) Through L.Rs. and others reported in *LAWS (SC) 2008 5 48*, Rafique Barkatulla Khan Vs. Shahenshah Hussain Iqbal Munshi reported in *LAWS(BOM) 211 9 191* and Ram Peary Vs. Gauri reported in *LAWS (ALL) 1977 4 18*.

6. Per contra, learned counsel Mr. Deshmukh for the respondent supports the impugned order. He would point out that cause of action for both the suits are different. In earlier suit respondent was not a party, but he was only attorney. He has filed later suit in the capacity of owner, therefore, provisions of Order XXIII Rule 1 (4) (a) and (b) of the of the C. P. C. are not attracted. He seeks to rely on the judgment of this Court in the matter of Harishchandra Vithoba Narwade and others Vs. Smt. Vatsalabai Narayan Shinde reported in *2004(4) Mh.L.J. 897*.

7. I have considered rival submissions of the parties. Earlier R.C.S. No. 538 of 2022 was filed by the vendor of the respondent – Ashok. It was disclosed to the Court that Ashok had sold out the suit property, hence he wanted to withdraw the suit, which is recorded in the order dated 12.12.2024. Same reason is

reiterated in order dated 09.01.2025 disposing of the suit as withdrawn. Respondent purchased suit land from earlier plaintiff – Ashok on 07.03.2024.

8. Respondent was appointed as attorney by power executed on 01.02.2023. Respondent, as such was not party to the earlier suit. There was no prohibition for him to purchase property when earlier suit was pending. No leave was required to be solicited by earlier plaintiff for withdrawing R.C.S. No. 538 of 2022, because he had sold out his interest to the respondent.

9. Subsequently filed R.C.S. No. 787 of 2024 by the respondent is in the capacity of owner. What is prohibited by Order XXIII Rule 1 (4) (a) and (b) of the C. P. C. is institution of fresh suit in respect of self same subject matter by the plaintiff withdrawing the suit. There is no impediment for the respondent to institute the present suit and the finding is rightly recorded by the Trial Court in that regard.

10. R.C.S. No. 538 of 2022 shows cause of action of 12.09.2022, when the then plaintiff was intimidated and threatened. Present R.C.S. No. 787 of 2024 discloses purchase of the suit land by the respondent on 07.03.2024. The cause of action is stated to be of 01.12.2024 after purchase of the property. The date of accrual of cause of action is different. It cannot be said that on self same cause of action fresh suit has been instituted or there is continuous cause of action and as such a suit is not tenable.

11. It is the prerogative of the respondent either to continue with earlier suit when the suit property was purchased *pendent lite* or to institute fresh suit after withdrawal of earlier suit. By implication of Order XXII Rule 10 of the C. P. C., it was open for the respondent to seek leave of the Court and to continue with earlier suit. But it cannot be countenanced that, that is the only permissible mode for him and present suit is barred by any provision of law. Respondent has instituted later suit on fresh cause of action, which is not prohibited either by Order XXII Rule 10 or Order XXIII Rule 1 (4) (a) and (b) of the C. P. C. Similar is the case with provision of Sec. 146 of the C. P. C. As per the said provision the respondent could have continued with earlier suit, but that is not the only course available to him. I find no merit in the submissions of the learned counsel for the petitioner in this regard.

12. Respondent is the transferee *pendent lite* and he was bound by the decree, had it been passed in R.C.S. No. 538 of 2022. His vendor withdrew that suit. Respondent being owner of the suit property has instituted later suit on fresh cause of action. There is no illegality or prohibition for instituting the suit. Recourse taken by the respondent is within the frame work of law. No case is made out to cause any interference.

13. Application Exhibit 26 is not styled as application under Order VII Rule 11 of the C. P. C. It is stated to have been filed under Order XXIII Rule 1 (4) (a) and (b) of the C. P. C. The prayer of the application is dismissal of the suit and not rejection

of the plaint. It is permissible to the party to raise plea under Order XXIII Rule 1 (4) (a) and (b) of the C. P. C., but same cannot be dealt with in the form of application under Order VII Rule 11 of the C. P. C. I have already discussed that there is no prohibition for respondent to institute present suit. In any way rejection of application Exhibit 26 cannot be faulted.

14. Petitioner has relied on the judgment of this Court in the matter of Rafique Barkatulla Khan Vs. Shahenshah Hussain Iqbal Munshi (supra). My attention is adverted to para No. 12 of the judgment and inter alia the decision of the Supreme Court in the matter of **Dhurandhar Prasad Singh Vs. Jai Prakash University and others reported in (2001) 6 SCC 534**. The ratio laid down by the Supreme Court cannot be made applicable. I have already observed that it was the choice of the respondent either to continue with earlier suit or to institute independent suit on fresh cause of action. It is not the purport of the ratio that just because the party is transferee *pendent lite*, he is precluded from instituting fresh suit.

15. Further reliance is placed on the judgment of the Supreme Court in the matter of Guruswami Nadar Vs. P. Lakshmi Ammal (D) Through L.Rs. and others (supra). I have considered the principles laid down in paragraph No. 3 of the judgment, which are in respect of purport of Sec. 52 of the Transfer of Property Act. In the present case, just because respondent is transferee *pendent lite*, it cannot be said that he is debarred from filing suit on fresh cause of action. The facts are distinguishable and the ratio

cannot be made applicable.

16. Lastly, reliance is placed on the judgment of the Allhabad High Court in the matter of **Ram Peary Vs. Gauri** (supra). The said judgment also throws light on the purport of Sec. 52 of the Transfer of Property Act. It is distinguishable on facts. In the case at hand though respondent was purchaser *pendent lite*, earlier suit was withdrawn. The devolution of interest by earlier plaintiff is unaffected. This judgment is also of no avail to the petitioner.

17. Respondent has placed reliance on the judgment of this Court in the matter of **Harishchandra Vithoba Narwade and others Vs. Smt. Vatsalabai Narayan Shinde** (supra). I have considered paragraph Nos. 11 to 13 of the judgment, which is squarely made applicable to the case at hand. The bar under Order XXIII Rule 1 (4) (a) and (b) of the C. P. C. is operative against vendor of the respondent that is Ashok and not to the respondent.

18. For the reasons recorded above, there is no substance in the writ petition. The writ petition is liable to be dismissed and same is dismissed. However, there shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb/July 25