



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 622 OF 2020

Surekha Parmeshwar Patil & others .....Petitioners

VERSUS

Malanbai Atmaram Patil & others .....Respondents

Mr. N. V. Dhako, Advocate holding for Mr. G. V. Wani, Advocate for the  
Petitioners.

Mr. U. S. Patil, Advocate for Respondent Nos. 1 to 3.

**CORAM : R. M. JOSHI, J.**

DATE : 15<sup>th</sup> OCTOBER, 2025.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 36 in Regular Civil Suit No. 59/2019 whereby Application filed by Defendant No. 2 under Section 10 of Code of Civil Procedure came to be allowed and thereby Regular Civil Suit No. 59/2019 filed by the Petitioners came to be stayed.

2. Learned counsel for Petitioners has drawn attention of the Court to the observations made by the Trial Court indicating that according to the Trial Court, the Petitioners herein could have filed counter claim instead of filing independent suit. It is his submission that these observations clearly indicate that the relief sought by the

Petitioners is independent to the suit filed by Respondents bearing Regular Civil Suit No. 26/2019.

3. Learned counsel for Respondents supported the impugned order.

4. There cannot be any dispute with regard to the fact that the Court shall not proceed with the trial of a suit where the matter in issue is directly and substantially in issue between the same parties or between the parties under whom they or any of them claim litigating in the same title, where such suit is pending before the competent Court. Herein in this case, Regular Civil Suit No. 59/2019 is filed on different cause of action. The said suit is filed for the purpose of seeking injunction in respect of one of the suit properties involved in Regular Civil Suit No. 26/2019. The observation of the Trial Court that it would be open for the Petitioners to file counter claim indicates that the relief sought by the Petitioners herein is independent to the suit filed by the Respondents. In such circumstances, it was necessary for the Trial Court to decide Regular Civil Suit Nos. 26/2019 and 59/2019 together by clubbing the same. In view of this, impugned order deserves interference.

5. In view of above discussion, impugned order passed below Exhibit 36 in Regular Civil Suit No. 59/2019 is set aside. Regular Civil Suit Nos. 26/2019 and 59/2019 be clubbed and decided together. Trial Court to make an endeavour to decide the suits as expeditiously as possible. Needless to say that the parties will be given an opportunity to lead evidence in both the suits.

( R. M. JOSHI)  
Judge

dyb