

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.3453 OF 2024**

Babaso Ramchandra Dudhat,
Age: 45 years, Occu.- Agriculturist,
R/at Tandulwadi, Tal. Malshiras,
Dist. Solapur.

..Petitioner
(Ori. Defendant)

Versus

1. Vijay Sadashiv Nilate,
Age: 41 years, Occu: Agriculturist,
2. Kisan Shivaji Gaikwad,
Age: 43 years, Occu: Agriculturist,
3. Dnyaneshwar Chandrakant Kamble,
Age: 27 years, Occu: Agriculturist
Nos.1, 2 and 3 R/at Tandulwadi,
Tal. Malshiras, Dist. Solapur.

..Respondents
(Ori. Plaintiffs No.1 to 3.)

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Ms. Manisha Devkar, Advocate for Petitioner.
Mrs. Kalpesh U. Patil, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 24th SEPTEMBER, 2025.
PRONOUNCED ON : 26th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 06.11.2023 passed by learned Civil Judge Junior Division, Malshiras below Exhibit-17 in Regular Civil Suit No.1209/2023, whereby application filed by petitioner seeking stay to proceeding in Regular Civil Suit No.1209/2023 pending decision of Special Civil Suit No.73/2022 has been declined.

3. The petitioner instituted Special Civil Suit No.73/2022 against Vitthal Ramchandra Ughade and others seeking relief of specific performance of contract on the basis of agreement to sale dated 19.01.2019 in respect of land Gut No.977/2/A/3 to the extent of 4.5 R. It is contention of petitioner that respondent-Vitthal Ughade agreed to sell suit property in his favour for total consideration of Rs.10,00,000/-. He has already parted with sum of Rs.5,00,000/- by way of earnest money and ready and willing to pay balance Rs.5,00,000/-. The defendant no.1-Vitthal has executed written agreement to sale dated 19.01.2019 on Bond Paper of Rs.100/- and also handed over possession to petitioner. However, defendant no.1 ignoring agreement to sale executed in favour of petitioner, transferred property in favour of defendant nos.2, 3 and 4 under registered sale deed dated 30.04.2021. According to petitioner, sale deed dated 30.04.2021 is illegal. No right is accrued to defendant nos.2, 3 and 4 on the basis of illegal sale deed. The defendant no.1 is under obligation to execute sale deed in favour of petitioner in pursuance to agreement to sale dated 19.01.2019.

4. Subsequently, present respondents who are purchasers of suit property under registered sale deed dated 30.04.2021 instituted Regular Civil Suit No.1209/2023 against petitioner contending that they have acquired ownership and possession of suit property under registered sale deed dated 30.04.2021. The Mutation Entry No.12661

is certified in their favour and petitioner is unconcerned with property. As such, they claimed relief of perpetual injunction against him in respect of land Gut No.977/2/A/3 to the extent of 4.5R purchased by them from vendor i.e. Babaso Dudhat.

5. In light of aforesaid scenario, petitioner, who is plaintiff in Special Civil Suit No.73/2022 filed application below Exhibit-17 in Regular Civil Suit No.1209/2023 i.e. subsequent suit to stay proceedings in said suit till decision of Special Civil Suit No.73/2022. The learned Civil Judge Junior Division, Malshiras rejected said application vide impugned order dated 06.11.2023. Hence, this writ petition.

6. Ms. Manisha Devkar, learned Advocate appearing for petitioner would submit that petitioner instituted previous suit i.e. Special Civil Suit No.73/2022 based on agreement to sale dated 19.01.2019 against original owner as well as respondents herein seeking decree of specific performance of contract. The respondents have instituted subsequent suit i.e. Regular Civil Suit No.1209/2023 seeking decree of perpetual injunction against petitioner in respect of selfsame property raising claim of their ownership and possession. According to learned Advocate appearing for petitioner, subject matter of controversy in both suits revolves upon rights of respective parties over suit property and their entitlement to enjoy possession thereof. The decision in previous suit i.e. Special Civil Suit No.73/2022 would have bearing on decision

in Regular Civil Suit No.1209/2023. In this background, to avoid conflicting findings on crucial issue, it was necessary to stay subsequent suit till decision in Special Civil Suit No.73/2022. The Trial Court erroneously declined to exercise jurisdiction under Section 10 of Code of Civil Procedure.

7. Mr. Kalpesh Patil, learned Advocate appearing for respondents vehemently submits that nature of relief claimed in both suits is altogether different. The petitioner is claiming decree against land owner for specific performance of contract dated 19.01.2019. There is no prayer against sale deed executed in favour of respondents. So far as Regular Civil Suit No.1209/2023, relief of perpetual injunction is claimed asserting possession on the basis of sale deed executed by vendor in favour of respondents. The issue that would be framed in both suits would not overlap each other. Both suits can be independently tried and decision in each suit may not conflict with each others. He would, therefore justify impugned order.

8. Having considered submissions advanced, it can be observed that object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue. Section 10 empowers Court to stay proceeding in subsequent suit if it was necessary to avoid two parallel trials and conflicting findings on same issue, which are directly and substantially in issue in previously instituted suit. The fundamental test is whether

on final decision being reached in previous suit, such decision would operate as *res judicata* in subsequent suit. Therefore, it is necessary to examine if subject matter in both suits is identical and matter in issue is directly and substantially in issue in previously instituted suit, finding of which may affect decision in subsequent suit.

9. In backdrop of aforesaid legal position, if pleadings in both suits are perused apparently one can note that suit property in both suit is one and same. The plaintiffs in both suits are claiming possession over suit property. The petitioner claims his possession on the basis of agreement to sale of which specific performance of contract is sought. The subsequent suit filed by respondents is based on sale deed dated 30.04.2021 executed by vendor and they claim perpetual injunction against petitioner asserting their ownership and possession over suit property. Apparently, in first suit filed by petitioner, Court will have to rule upon existence of agreement to sale, entitlement of petitioner to seek decree of specific performance of contract and issue as to readiness and willingness of petitioner to perform his part of contract. So far as Regular Civil Suit No.1209/2023 is concerned, Court is required to rule upon possession of respondents over suit property. The petitioner has not disputed execution of sale deed by his vendor in favor of respondents. Even he has not sought relief seeking declaration against sale deed. The petitioner has restricted his claim for specific performance of contract and possession based on his agreement to sale.

10. In this background, if plaintiff succeeds in his suit, he would be entitled to get decree of specific performance of contract against land owner. It is, therefore, difficult to hold that both suits are parallel and may result in recording conflicting findings on issues, which are directly and substantially in issue in subsequent suit. The Trial Court has correctly appreciated factual and legal aspects of matter and refused to stay proceeding in subsequent suit in exercise of powers under Section 10 of Code of Civil Procedure.

11. In light of aforesaid facts, it would be appropriate if both suits are tried together. If suits are allotted to different Courts looking to pecuniary jurisdiction, petitioner may apply to learned Principal District Judge for clubbing of both suits and its allotment before one and same Court. In case, such an application is made, learned Principal District Judge may consider same in accordance with law.

12. In that view of matter, Writ Petition stands dismissed with liberty in favour of petitioner to apply.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE