

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7538 OF 2023

Vitthal Khando Supekar

...Petitioner

Versus

1. Sachin Sahaji Shinde

2. Sandip Sahaji Shinde

...Respondents

SANTOSH
SUBHASH
KULKARNI

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Mr. Prasad Kulkarni, for the Petitioner.

Mr. Ashok Tajane, a/w Balaji Shinde, for the Respondents.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 16th APRIL, 2025

PRONOUNCED ON: 9th JUNE, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The petitioner – plaintiff takes exception to an order dated 13th January, 2023 passed by the learned Civil Judge, Solapur, on an application for stay of suit (Exhibit-45) in Special Civil Suit No.36 of 2018, whereby the said application came to be rejected.

3. The background facts necessary for the determination of this petition can be summarized as under:

3.1 For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed in RCS/65/2009, instituted by the petitioner.

3.2 The petitioner - plaintiff instituted a suit for declaration and injunction with the assertion that Vikas Bhanudas Mote, the predecessor-in-title of the plaintiff, had purchased land admeasuring 5.59 R out of Gat No.1255/1/1/1B/2A/2/1/A/1/1/1/1/1A situated at Mohol with a tin shade admeasuring 10 ft. X 10 ft. standing thereon from Smt. Manorama Savase. The latter had purchased an area admeasuring 13.43 Are out of Gat No.1255/1/1/1B/2A/2/1/A/1/1/1/1 from Madhukar Kshirsagar and two others, the original holders of the said plot of land, more particularly described in paragraph 1A of the plaint. Smt. Manorama Savase divided the said plot of land (1A) into four parts and plot No.4 admeasuring 5.59 Are described in paragraph 1B of the plaint was sold to Vikas Mote under a registered Sale Deed dated 14th February, 2005.

3.3 Eventually, the name of Vikas Mote came to be mutated to the record of rights of the said plot (1B) and the latter sold the said plot (1B) to the plaintiff under a registered Sale Deed dated 1st September, 2008 and, consequently, the name of the plaintiff came to be mutated to the record of rights to the said plot vide ME No.11356. Since then the plaintiff had been in possession and enjoyment of the said plot of land (1B).

3.4 On 12th April, 2009, defendant No.1 caused obstruction to the possession and enjoyment of the plaintiff and falsely claimed that the said shade was erected by defendant No.1. He had purchased the suit plot (1B) under a Sale Deed dated 9th April, 1985 from Madhukar Kshirsagar. In fact, Madhukar Kshirsagar and others had already divested their title in the suit plot (1B). They could not have conveyed a better title to defendant No.1.

3.5 During the pendency of the suit, the plaintiff asserts, defendant No.1 executed a Sale Deed on 28th September, 2010 in favour of defendant No.2 suppressing the fact that the suit was subjudice. Defendant No.2 attempted to establish possession over the suit plot (1B) on the strength of the said Sale Deed. Subsequently, defendant No.2 executed a Sale Deed in respect of the suit plot (1B) on 9th September, 2011 in favour of defendant Nos.3 and 4. Taking undue advantage of the political influence and muscle power defendant Nos.3 and 4 allegedly illegally demolished the tin shade of the plaintiff and erected a new tin shade admeasuring 40 ft. X 10 ft. over the suit plot (1B).

3.6 The plaintiff was thus constrained to institute the suit initially for prohibitory injunction and declaration that the purported Sale Deed dated 28th September, 2010 executed by

defendant No.1 in favour of defendant No.2, and the Sale Deed dated 9th September, 2011 executed by defendant No.2 in favour of defendant Nos.3 and 4 are not legal, valid and binding on the suit plot (1B) and the plaintiff, for recovery of possession of the suit plot (1B), a mandatory injunction to remove the shade unauthorizedly erected by defendant Nos.3 and 4 over the suit plot (1B) and mesne profits.

3.7 Defendant Nos.3 and 4 have, in turn, instituted a suit for a declaration that the Sale Deed dated 9th April, 1985 in favour of defendant No.1 by the original holder Madhukar Kshirsagar and the subsequent Sale Deed dated 28th September, 2010 by defendant No.1 in favour of defendant No.2 and the Sale Deed dated 9th September, 2011 by defendant No.2 in favour of defendant Nos.3 and 4 are legal and valid; that the plaintiffs are the owners of the suit plot (1B) on the basis of the said Sale Deeds, and the consequential relief of injunction to restrain the defendant – the plaintiff in RCS/65/2009 - from causing obstruction to the possession and enjoyment of the plaintiff - defendant Nos.3 and 4 - over the suit property being Property No.2385 having a length of 25.30 south-north and width of 16.15 east-west described in paragraph 1 of the plaint.

3.8 Defendant Nos.3 and 4 – the plaintiffs in SCS/36/2018, asserted that the plaintiff in RCS/65/2009 had obtained a sham and bogus Sale Deed dated 1st September, 2008 in his favour and the prior Sale Deeds in respect of the suit plot dated 17th September, 1997, 14th September, 2005 and 11th October, 2000 are also sham, bogus and without consideration.

3.9 Defendant Nos.3 and 4 had filed an application for transfer of RCS/65/2009 (instituted by the petitioner) to the Court of Civil Judge, Senior Division, Solapur, before which SCS/36/2018 (instituted by defendant Nos.3 and 4) was pending, under Section 24 of the Code of Civil Procedure, 1908 (“the Code”) being Misc. Application No.75 of 2018. The said application was resisted by the petitioner.

3.10 By an order dated 27th July, 2018, the Principal District Judge was persuaded to reject the application observing, *inter alia*, that the mere fact that the suit property in both the suits was same, by itself, was not a sufficient ground to transfer the suit to another Court, especially when the subsequent suit i.e. SCS/36/2018 came to be instituted after nine years of the institution of the former suit i.e. RCS/65/2009.

3.11 Being aggrieved, defendant Nos.3 and 4 had preferred a petition being WP/1413/2022. By an order dated 14th March,

2022, this Court dismissed the petition observing *inter alia* that since two suits were pending before different Courts having different pecuniary and territorial jurisdiction, there was no reason to interfere with the order of rejection of the application for transfer of the suit to one Court.

3.12 The petitioner filed an application for stay of the subsequent suit i.e. SCS/36/2018 asserting that issues which arose for determination in SCS/36/2018 directly and substantially arose for determination in RCS/65/2009, the former suit, and, therefore, the proceedings in SCS/36/2018, the subsequent suit, were required to be stayed.

3.13 Defendant Nos.3 and 4 resisted the application.

3.14 By the impugned order, the learned Civil Judge was persuaded to reject the application opining that the issues that arose for determination in SCS/36/2018 were not directly and substantially in issue in RCS/65/2009. The learned Civil Judge was also of the view that in WP/1413/2022 this Court had observed that two suits were pending before different Courts with different pecuniary and territorial jurisdiction and there was no reason to transfer the suit to one Court and in view of the said observation, the proceedings in the subsequent suit cannot be stayed.

4. Being aggrieved, the petitioner has preferred this petition.
5. An affidavit-in-reply has been filed on behalf of respondent Nos.1 and 2 in opposition to the petition.
6. I have heard Mr. Prasad Kulkarni, the learned Counsel for the petitioner, and Mr. Ashok Tajane, the learned Counsel for the respondents, at some length. The learned Counsel for the parties took the Court through the pleadings in both the suits and the instant petition.
7. Mr. Kulkarni, the learned Counsel for the petitioner, would urge that the learned Civil Judge completely misdirected himself in rejecting the application for stay of the subsequent suit by comparing and contrasting the issues settled in both the suits. In the process, the learned Civil Judge has completely missed the import of the provisions contained in Section 10 of the Code especially, the connotation of the expression “the matter in issue is also directly and substantially in issue in a previously instituted suit.”
8. Mr. Kulkarni would urge, it is not the identity of the issues framed in the former suit and the subsequent suit that is of importance. It is the identity of the matter in issue in the former suit with the subsequent suit, that is of significance. It was submitted that in fact in the application for transfer of the

former suit to the Court of Civil Judge, Senior Division at Solapur, defendant Nos.3 and 4 had categorically contended that the subject matter, the suit property, the parties and the evidence which would be required to be adduced, in both the suits, were the same and, therefore, it was necessary to transfer the suit. However, when the petitioner filed application for stay of the subsequent suit, defendant Nos.3 and 4 took a summersault and contended that the matter in issue in both the suits was not identical.

9. In the case at hand, according to Mr. Kulkarni, if the former suit is adjudicated, nothing would remain for adjudication in the subsequent suit instituted by defendant Nos.3 and 4. Since the essential test stands satisfied, the learned Civil Judge ought to have stayed the proceedings in SCS/36/2018. Instead, the learned Civil Judge was swayed by the observations made by this Court in WP/1413/2022 in a completely different context. To buttress these submissions, Mr. Kulkarni placed reliance on a judgment of the Supreme Court in the case of *National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara*¹.

1 (2005) 2 Supreme Court Cases 256.

10. In opposition to this, Mr. Tajane, the learned Counsel for the respondents, would urge that the application for stay of the subsequent suit was wholly misconceived. Having opposed the transfer of the former suit to the Court of Civil Judge, Senior Division at Solapur, it was not open for the plaintiff to now contend that the matter in issue in both the suits was identical. Taking the Court through the averments in the plaint in the former suit and in the subsequent suit, Mr. Tajane would urge that by no stretch of imagination can it be said that the issues that directly and substantially arise for determination in the former suit also arise for determination in the subsequent suit.

11. Mr. Tajane submitted that for the application of Section 10 the whole of the subject matter of the suit shall be covered by the former suit. Section 10 will not apply where only few of the matters in issue are common. To bolster up this submission, Mr. Tajane placed reliance on a judgment of the Supreme Court in the case of *Aspi Jal and another vs. Khushroo Rustom Dadyburjor*². Reliance was also placed on a judgment of a learned Single Judge of this Court in the case of *Dewangi Deepak Ture Patil vs. Vijay and others*³, wherein in the context of the fact that the question of title was not substantially in

2 (2013) 4 Supreme Court Cases 333.

3 2024 DGLS (Bom.) 3428.

issue in the subsequent suit for recovery of possession under Section 6 of the Specific Relief Act, it was held that both the suits can proceed simultaneously and the subsequent suit was not required to be stayed.

12. An endeavour was made by Mr. Tajane to also draw home the point that in WP/1413/2022 this Court had recorded a view that the issues involved in SCS/36/2018 are not directly and substantially in issue in RCS/65/2009. And, therefore, no interference is warranted in the impugned order.

13. I have given anxious consideration to the rival submissions. The criticism of Mr. Kulkarni that the learned Civil Judge did not properly appreciate the identity of the matter in issue in both the suits merits consideration, first. From the perusal of the impugned order, it appears that the learned Civil Judge considered it appropriate to compare and contrast the issues settled in the former suit and the subsequent suit and then determine whether the matter in issue in the subsequent suit is directly and substantially in issue in the former suit. The learned Civil Judge, thus, extracted the issues in both the suits and after comparing and contrasting the issues returned a finding that the issues in the subsequent suit do not directly and substantially arise for determination in the former suit.

14. Comparing and contrasting the issues in both the suits, may assist the Court in appreciating whether the matter in issue in the subsequent suit is also directly and substantially in issue in the former suit. However, to resort to the said exercise of comparison as the sole test to determine whether the subsequent suit is required to be stayed is not a sound practice. There is a clear and present danger of being misdirected in appreciating the true scope of the former and the subsequent suit. Instead, the Court ought to consider the pleadings in both the suits and by applying the well recognized principle as to whether the decision in the former suit would operate as *res-judicata* in the subsequent suit, decide the application for stay of the subsequent suit keeping in view, the object of the provisions contained in Section 10 of the Code.

15. Section 10 of the Code reads as under:

“Section 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] 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] from trying a suit founded on the same cause of action.”

16. The phraseology of Section 10 would indicate that it is couched in a peremptory form, as it begins with the word, 'No'. Evidently, the avowed object of the conferment of the power on the Court to stay the proceedings in the subsequent suit is to prevent the Courts of concurrent jurisdiction from proceedings with and determining two parallel suits in respect of the very same matter in issue, and thereby obviate the risk of conflicting findings by two Courts on the same issue. Stay of suit is warranted where there is identity of the matter in issue. If the whole of the subject matter of the suit which is ought to be stayed, forms part of the subject matter of the former suit, then the subsequent suit is required to be stayed.

17. To determine whether the issues that arise for determination in the subsequent suit also directly and substantially arise for determination in the former suit, the test is whether on the final decision being rendered in the previous suit, such decision would operate as *res-judicata* in the subsequent suit. Thus, the emphasis is on the words, 'directly and substantially in issue' which are used in contradistinction to the words, 'incidentally and collaterally in issue'. The matter in issue in the former suit and subsequent suit must, therefore,

be, 'directly and substantially in issue' and not merely 'incidentally or collaterally in issue'.

18. The object and nature of the provisions contained in Section 10 of the Code was expounded by the Supreme Court in the case of *NIMHNS* (supra), on which reliance was placed by Mr. Kulkarni, in the following words:

"8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical."

(emphasis supplied)

19. In the case of *Aspi Jal* (supra), on which reliance was placed by Mr. Tajane, the Supreme Court expounded the object of Section 10 and the prerequisites for its applicability, as under:

"9. From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of

the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding."

(emphasis supplied)

20. The pivotal question, that arise for consideration is, whether the matter in issue in the subsequent suit is also directly and substantially in issue in the former suit. For an answer, it is necessary to have a meaningful reading of the plaints in the former suit and the subsequent suit. By and large, there is not much controversy over the identity of the suit property in both the suits as the property over which the plaintiff, and defendant Nos.3 and 4, assert rival proprietary title. The bone of contention is the passing of the valid title to the plaintiff and defendant Nos.3 and 4 by their respective vendors. The plaintiff in former suit (RCS/65/2009) claims that the original holder Madhukar Kshirsagar had sold the suit plot (1A) to Smt. Manorma Savase, who divided the said suit plot (1A) into four sub-plots and sold 4th sub-plot (1B) to Vikas Bhanudas Mote, the predecessor-in-title of the plaintiff, under a

registered Sale Deed dated 14th February, 2005. Thereupon Vikas Mote conveyed the said suit plot (1B) under the registered Sale Deed dated 1st September, 2008, to the plaintiff.

21. In contrast, the plaintiffs in SCS/36/2018 (defendant Nos.3 and 4 in the former suit) aver that Madhukar Kshirsagar, the original holder, had entered into an Agreement for Sale of the suit plot (1B) in favour of Nivrutti Nagnath Dalve (D1) and eventually Sale Deed was executed on 9th April, 1985. Defendant No.1 conveyed the suit plot to defendant No.2 under a registered Sale Deed dated 28th September, 2010 and the latter executed a Sale Deed in favour of defendant Nos.3 and 4 on 9th September, 2011. The instrument executed by Madhukar Kshirsagar, the original holder in favour of Smt. Manorama Savase and the subsequent instrument by the latter in favour of Vikas Mote are all sham and bogus.

22. The plaintiff in the former suit (RCS/65/2009), on his part assails the legality and validity of the instruments purportedly executed by Madhukar Kshirsagar in favour of Nirutti Dalve (D1) and the subsequent instruments.

23. In essence, the essential dispute between the parties revolves around the legality and validity of the conveyances executed by Madhukar Kshirsagar in favour of Manorama

Savase, through whom the plaintiff claims, and Nivrutti Dalve, through whom defendant Nos.3 and 4 claim. It is in this context, the assertions made by the parties in the previous proceedings assume significance.

24. In the application seeking transfer of the former suit to the Court of Civil Judge, Senior Division at Solapur, defendant Nos.3 and 4 had categorically contended that in respect of the very same suit plot, two different sale deeds were executed in favour of the plaintiff and defendant Nos.3 and 4 and, therefore, disputes had arisen between the parties; the suit properties were same, the subject matter of the suit was identical and evidence was also same. These assertions of defendant Nos.3 and 4 cannot be brushed aside as restricted to the prayer seeking transfer of the former suit to the Court of Civil Judge, Senior Division, Solapur. These assertions also indicate the nature of the controversy between the parties in the estimation of defendant Nos.3 and 4.

25. It is true the subsequent developments, especially, the alleged transfer of the suit plot (1B) by defendant No.1 in favour of defendant No.2 during the pendency of the former suit and, further conveyance, by defendant No.2 in favour of defendant Nos.3 and 4, and the implications of the principle of *lis pendens*

and the alleged demolition of the structure erected by the plaintiff and erection of a new structure, by defendant Nos.3 and 4, are the matters which may not necessarily warrant determination in the subsequent suit. However, that does not change the nature of the real matter in issue between the parties. At the heart of the controversy is the proprietary title over the suit plot (1B).

26. To obtain the relief of the declaration and injunction; perpetual and mandatory, it is incumbent upon the plaintiff in the former suit to establish his proprietary title over the suit plot (1B). If he succeeds in establishing the proprietary title over the suit plot (1B) the claim of proprietary title of defendant Nos.3 and 4 premised on the conveyance by the original holder in favour of Nivrutti Nagnath Dalve (D1), would get dislodged. A finding on the proprietary title over the suit plot (1B), either in favour or against the plaintiff in the former suit, would operate as *res-judicata* in the subsequent suit. Thus the finding on title would bear upon the claim of plaintiff, and defendant Nos.3 and 4. The fact that the plaintiff in the former suit is seeking recovery of possession and a mandatory injunction to demolish the shade allegedly unauthorizedly

erected by defendant Nos.3 and 4, is essentially subsidiary to the issue of proprietary title.

27. Therefore, in my view, the learned Civil Judge was not justified in comparing and contrasting the issues in the former suit and the subsequent suit and then returning a finding that since the issues of possession, illegal demolition of the structure erected by the plaintiff and the alleged erection of new structure by defendant Nos.3 and 4 were not the subject matter of the subsequent suit, it was not required to be stayed. The trial court ought to have kept in view that the decision on the aspect of proprietary title in the former suit would clearly operate as *res-judicata* in the subsequent suit.

28. From the aforesaid standpoint, there is a clear and present possibility of conflicting decisions in both the suits if two different courts were to try and determine the suits in which the matter in issue is the same. The subsequent suit was, therefore, required to be stayed.

29. The learned Civil Judge was also not justified in drawing support to his reasoning from the order passed by this Court in WP/1413/2022 dated 14th March, 2022. The context in which this Court made those observations ought to have been kept in view. The learned Principal District Judge while rejecting the

application for transfer of the former suit to the Court of Civil Judge, Senior Division, had explicitly noted that applications for rejection of the plaint in the subsequent suit or/and for stay of the said suit were pending. And the mere fact that the suit property was identical in both the suits was not a justifiable ground to transfer the former suit to the Court of Civil Judge, Senior Division at Solapur. It was in that context, this Court had observed that both the suits were pending before the different courts with different pecuniary and territorial jurisdiction. Those observations cannot be construed to mean that this Court had opined that the matter in issue in the subsequent suit was not directly and substantially in issue in the former suit.

30. The upshot of the aforesaid consideration is that the fundamental test of the finding on title in the former suit operating as a *res-judicata* in the subsequent suit stands satisfied. Thus, the trial court was in error in rejecting the application for stay of the subsequent suit. Therefore, the impugned order deserves to be interfered with.

31. Hence, the following order:

: O R D E R :

(i) The petition stands allowed.

- (ii) The impugned order stands quashed and set aside.
- (iii) The application for stay of the subsequent suit i.e. SCS/36/2018 stands allowed.
- (iv) The proceedings in the subsequent suit i.e. SCS/36/2018 stand stayed till the decision in RCS/65/2009.
- (v) Rule made absolute to the aforesaid extent.
- (vi) No costs.

[N. J. JAMADAR, J.]