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

CIVIL WRIT PETITION NO. 1038 OF 2025

Imamuddin Nihaluddin Shaikh

...Petitioner

Versus

State of Maharashtra & Ors

...Respondents

Mr. Sandeep Mishra, i/b Mr. Vijay Tiwari, for the Applicant.

CORAM: N. J. JAMADAR, J.

DATE: 30th JANUARY 2025

ORDER:-

1. Heard the learned Counsel for the Petitioner.
2. Jayram Patil was the holder of the agricultural lands situated at Navghar, more particularly described in paragraph 1 of the Plaint. Janibai Jayram Patil was the widow of Jayram Patil. Hiraji, the predecessor-in-title of the Plaintiffs, was the son of Jayram. Janibai died intestate on 2nd May 1999. Hiraji Jayram Patil become the sole owner of the suit property. Hiraji died intestate on 4th February 2014.
3. When the Plaintiffs, who are the legal heirs of Hiraji approached the revenue authorities to mutate their names, it transpired that Hiraji and Janibai had allegedly executed a Deed of Conveyance dated 1st October 1991 and a Power of Attorney dated 11th October 1991 in favour of Otaram Choudhary (D1) and on the strength of the said

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documents Otaram (D1) has allegedly executed a Memorandum of Understanding in favour of Imamuddin Shaikh (D2) on 18th March 1994, and agreed to sale the suit property and thereafter on 16th February 1995 a Deed of Conveyance was executed by Otaram (D)1 in favour Imamuddin (D2).

4. Alleging that the said instruments are false, forged and fabricated, Respondent Nos. 2 to 7 instituted Special Civil Suit No. 37 of 2016 for declaration that they are the absolute owners of suit properties and that Defendant Nos. 1 and 2 and any other person claiming through them, do not have any right, title and interest and that the aforementioned instruments are illegal, bad-in-law, null and void and do not bind the Plaintiffs.

5. The Petitioner (D2) instituted a suit bearing Special Civil No. 93 of 2017 seeking a declaration that the Deed of Conveyance dated 16th February 1995 and Deed of Confirmation dated 11th December 1997, in pursuance of the Document dated 1st October 1991 executed by Otaram (D1) in favour of the Petitioner in respect of the suit property are legal, valid and binding upon the Defendants, that the Plaintiff is the absolute owner of the suit properties and Defendant Nos. 2 to 7 have, in turn, no right, title and interest therein.

6. In the said Suit No. 93 of 2017 instituted by the Petitioner, Defendant No. 7 filed an Application seeking stay of the said suit under

Section 10 of the Code of Civil Procedure 1908 (“the Code”). The Petitioner filed an Application (Exhibit “35”) to consolidate both the suits for adjudication at the one and some time.

7. By the impugned order, the learned Civil Judge was persuaded to return a finding that all the conditions of Section 10 of the Code were satisfied and the subsequent suit, i.e., Special Civil Suit No. 93 of 2017 instituted by the Petitioner, was required to be stayed. Thus, the Application of Defendant No.7 (Exhibit “10”) came to be allowed and that of the Petitioner (Exhibit “35”) was rejected.

8. Being aggrieved, the Petitioner-Plaintiff in SCS No. 93 of 2017, has invoked the writ jurisdiction of this Court.

9. Mr. Sandeep Mishra, learned Counsel for the Petitioner, submitted that the learned Civil Judge lost sight of the fact that in addition to seeking declaration about the legality and validity of the instrument executed by Otaram (D1) in favour of the Petitioner, the Petitioner was also seeking possession of the suit land. In the event, the suit instituted by the Petitioner, i.e., SCS No. 93 of 2017 is stayed, the Petitioner would be rendered remediless as the said relief of the possession cannot be sought in SCS No. 37 of 2016, the former suit. On the contrary, the clubbing of both the suits and the simultaneous trial would advance the cause of justice.

10. Upon careful perusal of the Plaints in both the suits and the material on record, this Court finds that the learned Civil Judge has correctly exercised the discretion to stay the subsequent suit, i.e., SCS No. 93 of 2017 until the final disposal of SCS No. 37 of 2016.

11. As enunciated in the case of **National Institute of Mental Health & Neuro Sciences Vs C Parameshwara**¹, the learned Civil Judge has found that, the fundamental test to attract Section 10, namely, whether on final decision being reached in SCS No. 37 of 2016, such decision would operate as *res judicata* in the subsequent suit instituted by the Petitioner. i.e., SCS No. 93 of 2017, stood satisfied.

12. From a bare perusal of the averments in both; the former suit and instant suit, and especially the prayers therein, it becomes evident that the matter in issue in the instant suit is directly and substantially in issue in the former suit. It cannot be said that the issues that arise for determination in the former suit are incidentally or collaterally in issue, in the instant suit. In substance, the whole of the subject matter in both the proceedings is identical as the Plaintiffs in the former suit seek a declaration that the instruments on the strength of which Otaram (D1) has conveyed the suit properties in favour of the Petitioner, are void, illegal and do not bind the Plaintiffs and, conversely, the Petitioner

1 (2005) 2 SCC 256.

seeks a declaration that those instruments are valid, enforceable and bind the Plaintiffs in the former suit.

13. Resultantly, this Court does not find any reason to entertain the Petition.

14. Hence, the following order.

ORDER

- (i) The Petition stands dismissed.
- (ii) No costs.

[N. J. JAMADAR, J.]