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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16757 OF 2024

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Sanjay Pandurang Nate & Anr.

... Petitioners

V/s.

Usha Vasant Padle & Ors.

... Respondents

Mr. Uday P. Warunjikar with Mr. Hrishikesh Nabar for
the petitioners.

Mr. Naveen Joshi for respondent Nos.1 to 4.

Mr. Ulhas S. Shinde for respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2025

P.C.:

1. The petitioners are challenging the order passed by the City Civil Court rejecting their application under Section 10 of the Code of Civil Procedure, 1908. According to the petitioners, probate proceedings in relation to the registered Will dated 30th November 2009 are pending before this Court. The petitioners contend that the adjudication of the probate proceedings involves determining the validity and enforceability of the Will, which is crucial since the suit for partition directly pertains to the properties that are the subject matter of the same Will. Therefore, they argue that the issue in the partition suit is substantially identical to the one in the probate proceedings, and the simultaneous continuation of both

would lead to conflicting findings.

2. The Trial Court, by the impugned order, rejected the application under Section 10 on the ground that the issues in the probate proceedings and the suit for partition were distinct and that there was no sufficient overlap to warrant the stay of the partition suit. Aggrieved by this decision, the petitioner has filed the instant writ petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

3. The test for determining the applicability of Section 10 of the Code of Civil Procedure, 1908, has been conclusively laid down by the Hon'ble Supreme Court in ***National Institute of Mental Health & Neuro Sciences (NIMHANS) & Ors. vs. C. Parameshwara***, (2005) 2 SCC 256. The judgment underscores that Section 10 is designed to prevent courts from simultaneously trying two suits involving the same subject matter to avoid conflicting decisions and ensure judicial discipline. In this case, the lack of commonality of parties prima facie raises a significant question regarding the applicability of Section 10. The Supreme Court has laid down that the fundamental test to attract Section 10 is whether, upon a final decision being reached in the previous suit, such a decision would operate as res judicata in the subsequent suit.

4. In the present case, the probate proceeding, which is concerned with the genuineness and validity of the Will, is distinct from the partition suit, which primarily involves the determination of rights and shares in the suit property among the legal heirs. While the findings in the probate proceedings may have a bearing

on the rights in the partition suit, they do not make the issues directly and substantially the same for the purposes of Section 10. Hence, the Trial Court rightly concluded that the two proceedings could proceed independently, and there was no bar to the continuation of the partition suit.

5. The contention of the petitioners that the partition suit must be stayed to avoid conflicting findings lacks merit, as any decision in the probate proceedings can always be brought to the notice of the Court adjudicating the partition suit to ensure consistency. In the absence of a clear overlap or a likelihood of *res judicata*, the application under Section 10 was rightly rejected.

6. In view of the above, there is no merit in the writ petition. The same stands dismissed. No costs.

(AMIT BORKAR, J.)