

MHAH170000722022



ORDER BELOW EXHIBIT 61

(Decided on 24/03/2026)

By present application the original Defendant seeking a stay of the present suit under Section 10 of the Code of Civil Procedure, 1908 (CPC), pending the adjudication of a previously instituted suit, bearing Regular Civil Suit (RCS) No. 417 of 2021.

2. It is the contention of the Applicant/Defendant that the present suit has been instituted by the Plaintiff seeking the recovery of possession and a perpetual injunction. However, the Defendant had already instituted a prior suit viz. RCS No. 417 of 2021, which is currently pending. The Applicant asserts that the parties involved in both suits are the same, the suit properties are identical, and the matter in issue in both suits revolves around the same partition deed dated 12th September 2013. Furthermore, it is submitted that an interim order has already been passed in favor of the present Defendant in the previously instituted suit. On these grounds, the Applicant prays that the proceedings in the present suit be stayed.

3. The Plaintiff has filed a strong objection to this application, contending that the contents thereof are neither true nor correct, rendering the application legally untenable. It is submitted by the Plaintiff that the prayers, the cause of action, the array of parties, and the suit properties involved in RCS No. 417 of 2021 and the present suit are

entirely distinct. Consequently, the provisions of Section 10 of the CPC are not attracted.

4. The Plaintiff further points out that RCS No. 417 of 2021 is still at a initial stage, where summons have not yet been served upon the parties, whereas the present suit has advanced to the stage of recording evidence. Therefore, the Plaintiff prays for the outright rejection of the application.

5. I have heard the learned counsel for both sides at length and carefully perused the record, including the documents and plaints placed before me. At the outset, Section 10 of the CPC mandates the stay of a suit when the matter in issue is directly and substantially the same as the matter 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, and where such prior suit is pending in a competent court having jurisdiction to grant the relief claimed. To apply this provision, it is imperative to ascertain whether the factual matrix of the present case satisfies these essential statutory ingredients.

6. Upon verification of the photocopies of the plaints and the list of parties, a clear discrepancy emerges regarding the identity of the parties. While most parties overlap, the present Defendant No. 3, namely Surekha Sitaram Petkar, is notably absent from the array of parties in the previously instituted suit. Although a party named Surekha Rajendra Petkar appears as Defendant No. 7 in the previous suit, the middle names and resulting identities are distinct. A perusal of the pedigree provided at paragraph no. 1 of the plaint confirms that Defendant No. 3 has been

newly added to the present suit. Thus, it cannot be said that the parties in both suits are strictly identical.

7. Turning to the crucial aspect of the subject matter of the litigation, a minute comparison of the suit properties detailed in both complaints demonstrates a manifest lack of complete identity. Upon careful perusal of the property schedules, it is evident that in the previously instituted suit (RCS No. 417 of 2021), the scope of the litigation encompasses multiple parcels of lands, specifically delineated as properties 'A', 'B', 'C', and 'D', all purportedly carved out from the same Gat number. Conversely, the scope of the present suit is significantly found same up-to property 'A' alone, entirely excluding properties 'B', 'C', and 'D'.

8. Furthermore, a glaring discrepancy is apparent in the pleadings regarding the residential house property. The house property forming part of the previously instituted suit is denoted as property 'E', whereas the house property forming the subject matter of the present suit is referred to as property 'B'. Upon closer scrutiny of the respective complaints, the physical description, boundaries, and identifying dimensions of these house properties differ entirely. In the absence of a clear, corroborating, and satisfactory description that bridges this discrepancy, it is legally impermissible for this Court to presume that these disparate schedules refer to the exact same physical property. Consequently, as the properties involved are materially distinct and the exact extent of the disputed estate does not overlap, the indispensable prerequisite of 'identity of subject matter' required to stay the present proceedings remains wholly unsatisfied.

9. Lastly, I have examined the nature of the litigation and the reliefs claimed. In RCS No. 417 of 2021, the present Defendant (as Plaintiff therein) seeks a declaration that a partition effected before the Revenue Officer on 31st January 2014 is not binding, along with a claim for separate possession of a 1/6th share and a declaration of ownership regarding a specific portion of a house property. In stark contrast, the present suit involves a prayer for possession and perpetual injunction based upon a partition deed dated 12th September 2013, which is fundamentally distinct. The cause of action for the present suit is pleaded as having arisen on 12th September 2013. Therefore, neither the matter in issue nor the reliefs sought are directly and substantially the same.

10. While the parties may be litigating under the same title, the crucial ingredients of identical parties and an identical subject matter/cause of action are patently absent. For want of satisfaction of these mandatory prerequisites, the present suit cannot be stayed under Section 10 of the CPC.

11. In light of the aforesaid reasoning, the application is devoid of merit and deserves to be rejected. Hence, I pass the following order:

ORDER

The application at Exhibit 61 stands rejected.

Rahata
Date:- 24/03/2026

(Santosh R. Bharad)
2nd Jt. Civil Judge, J.D., Rahata