

Order below Exh. No. 24 in R.C.S. No. 549/2015.

1. This is an application made by the defendants No. 1 to 9 under Section 10 of the Code of Civil Procedure for stay of present suit. They have contended that prior to institution of the present suit, there are three civil suits bearing R.C.S. No. 132/1997, R.C.S. No. 585/2005 and R.C.S. No. 158/2013 are instituted and pending between the same parties or their predecessors in title. The present plaintiffs are appeared in R.C.S.No. 158/2013 pending in the court of the Civil Judge, Senior Division, Kopargaon wherein relief of declaration and injunction is sought by the defendants. Subject matter of the said suit and the present suit is identical. If hearing of both the suits are continued simultanaeously, possibility of passing multipal orders cannot be ruled out. For the reason, these defendants prayed for stay of present suit till final decision of R.C.S. No. 132/1997, R.C.S. No. 585/2005 and R.C.S. No. 158/2013 those are instituted prior to the present suit.

2. Countering the averments of the defendants, the plaintiffs have filed their say at Exh. 30 and contended that the defendants are causing disturbance to their peaceful possession over the suit lands. Therefore, the plaintiffs are constrained to institute the present suit for relief of perpetual injunction against them. Now the suit is at interim stage and trial of the suit is not begin yet. Also subject matter of the present suit and the previous suits is not identical. Even though the Hon'ble High Court has not granted relief in favour of the present

defendants. Hence, it is not legal to stay the present suit. Ultimately, they urged for rejection of application made by the defendants.

3. Perused plaint in present suit and copies in R.C.S. No. 132/1997, R.C.S. No. 585/2005 and R.C.S. No. 158/2013 filed on record by the defendants alongwith list at Exh. 36. Heard both sides. It appears that the present suit is instituted for relief of perpetual injunction against the defendants as they are causing obstruction to the peaceful possession of the plaintiffs over the suit lands.

4. Regarding R.C.S.No.132/1997, it appears that the suit is instituted by the predecessor in title of the plaintiffs against present defendant No. 2 for relief of perpetual injunction. Though subject matter in the said suit is identical to that of the present suit, the said property has purchased by the plaintiffs from Nanasaheb Ramrao Kapase who is predecessor in title of the plaintiffs. As a matter of fact, previous suit was instituted on different cause of action whereas, different cause of action is arise for the present plaintiffs i.e. 2 to 3 days prior to institution of the present suit. Therefore, it cannot be said that the matter in issue is directly and substantially in issue in the previously instituted suit.

5. Likewise, in R.C.S. No. 585/2005, one Bhagwat Sarangdhar Sadaphal has instituted the suit for measurement of the lands and for removal of encroachment. From record of the proceeding, it appears that the said plaintiff was mortgagee of the

lands and the said mortgage was redeemed by the predecessor in title of the present plaintiff. Thus, now Bhagwat Sadaphal is not in possession of the present suit land. Therefore, the relief claimed in the present suit is different that of in R.C.S. No. 585/2005.

6. In R.C.S.No. 158/2013, one of the defendants in the present suit have instituted the said suit against the State and other defendants including plaintiff No. 1 of the present suit. However, the relief is claimed in the said suit is different that of the present suit. Also the parties are not same. Hence, provsion of section 10 of Code is not applicable to the said suit.

7. In respect of legal position i.e. Section 10 of the Code of Civil Procedure, it is prescribed that “ *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* ” Thus, the section is much clear as to what stage, the suit must be stayed. As per the said section the court shall not proceed with the trial if the subject matter in the suit is identical that of previously instituted suit. However, in the present case trial of the suit is not begin yet. Therefore, the suit cannot be stayed in view of the Section 10 of the Code.

8. The learned counsel for the plaintiffs relied upon a judgment of the **Hon'ble Apex Court in National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, reported in AIR 2005**

SC 242 wherein it is held that *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 find substantially in issue” are used in contradistinction 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 the subject-matter in both the proceedings is identical.*

9. Thus, the ratio as above is very well applicable to the suit in hand as the whole subject-matter in the present suit and the suits instituted prior to this suit are not identical.

10. Thus, reliefs claimed in the present suit and previous suits are not common but different. Cause of action of the suits are also appears different. Thus, sum and substance of above discussion is that the matter in issue in present suit is not directly and substantially in issue in previously instituted suits and between the same parties. Also trial of the present suit is not begin yet. For the aforesaid reasons, application made by these defendants is devoid of merits. Hence, I proceed to pass following order.

ORDER

Application is rejected.

Place: Rahata.
Date: 12/02/2016.

(V. V. Khulape)
2nd Jt. Civil Judge, J.D.
Rahata.