

Order Below Exh.67 in R.C.S. No. 446/2012

Sudhir Raut Vs. Malan Raut and others

(Passed on : 10th January, 2017)

1. This is an application to stay suit under Section 10 of C.P.C. The plaintiff has filed his say vide Exh. 75. Heard both the learned advocates. Perused the record.

2. Defendant No. 1 has filed this application on the ground that prior suit R.C.S. No. 162/2004 is pending, as appeal before Hon'ble District Court. The issue regarding will deed is likely to arise in appeal also. Hence, this subsequent suit be stayed.

3. The plaintiff has opposed the application on the ground that both the suits are different. First suit was for cancellation of sale deed and this is due to false will deed and to claim partition.

4. The test as to applicability of Section 10 of CPC is simple that whether decision in prior suit would amount to res judicata in later suit. The copy of prior suit which is filed with list vide Exh. 71 is perused. If said suit is compared with the present suit parties to the suit are very much different, except few common parties. The previous suit R.C.S. No. 162/2004 was for cancellation of sale deed and for recovery of possession by challenging the license. It is for city S.No. 648. While the present suit is for city S.No. 644. It is for partition and claim separate

possession. The plaintiff has claimed his share in it. The disputed will deed is stated to be false and bogus. Hence, the present suit is different, parties are different, subject matter is different, cause of action as well as different issues are involved in the present suit. Hence, the application vide Exh. 67 is not at all having any merit. Hence, same is liable to be rejected. Hence, following order is passed :-

// O r d e r //

(1) The application vide Exh.67 is rejected.

Date: 10.01.2017

(Mahendra R.Jadhav)
2nd Jt.Civil Judge (Jr.Dn.)
Shrigonda.