

**SPECIAL CIVIL SUIT NO. 01/2013**

*Dattatray Prabhakar Dhumal & anr.*

*vs.*

*Harun Dadamiya Kureshi and ors.*

**ORDER AT EXHIBIT 57**

1. The present application is filed by the defendants No. 7 to 10 for stay of hearing of present suit under Section 10 of the Code of Civil Procedure. It is contended that, the defendants No.7 to 10 have filed a civil suit bearing Spl.C.S. No.159/2010 (old no.582/08) against one Harun Dadamiya and others. In the said civil suit, the present plaintiffs are the defendants No.10 and 11. The said civil suit has been transferred from the Court of Civil Judge, S.D., Aurangabad to this Court. It is further contended that, the parties, subject matter and relief claimed in the present suit and Spl.C.S.No.159/2010 are the same. The civil suit bearing Spl.C.S. No.159/2010 had been instituted prior to present suit. Therefore, the hearing of present suit may be stayed.

2. The plaintiffs have filed their say and opposed the present application. It is submitted that, in the civil suit bearing Spl.C.S. No.159/2010, both the suits i.e. present suit and Spl.C.S.No.159/2010 have been directed to be tried together by this Court by way of its order. Therefore, the present application is not maintainable in law. Hence, it is prayed that, the present application may be rejected with cost.

3. I have heard the learned counsel of both sides. The learned counsel of defendants No.7 to 10 in course of his argument had submitted that, the matter in issue in the present suit is directly and substantially in issue in Spl.C.S.No. 159/2010 between the same parties before the Court having jurisdiction to grant the relief.

Therefore, the present suit having been instituted subsequent to Spl.C.S. No. 159/2010, the hearing of present suit may be stayed under Section 10 of the Code of Civil Procedure.

4. As against this, the learned counsel of plaintiffs had submitted that, the matter in issue in both suits are not directly and substantially the same. Therefore, the hearing of present suit cannot be stayed. In support of his submissions, the learned counsel of plaintiffs had placed reliance on the decision of Hon'ble Bombay High Court in the case of Minocher Bheramji Damania vs. Hema N. Dadachanji and others, AIR 1982 Bombay 151. In that case, the question before the Hon'ble High Court was whether recourse can be had to Section 151 of the Code of Civil Procedure when the facts did not justify stay under Section 10 of the Code. The Hon'ble High Court having referred to decision of Hon'ble Supreme Court in the case of Aminchand Pyaralal vs. Union of India (1977) 79 BOM.L.R. 1, had answered the said question in the negative. In the present suit, no such question arose between the parties. Therefore, the facts of the case relied upon by the learned counsel of plaintiffs are not identical to that of present suit. Hence, the decision of Hon'ble High Court cannot be made applicable herein.

5. The learned counsel of plaintiffs in course of his argument had further submitted that, both suits have been directed to be tried together by this Court vide its order passed in Spl.C.S.No.159/2010. Therefore, the present application is not maintainable in law. In the light of submissions made, I carefully examined the record of Spl.C.S.No.159/2010. It appears from the record that, the present plaintiffs had filed an application in Spl.C.S.No. 159/2010 at Exh. 133 for recording of common evidence and delivering common judgment in the said suit and present suit. Accordingly, the order has been passed

by this Court on 29.07.2015 that, the common evidence of the parties shall be recorded in the said suit and present suit so as to enable the Court to deliver the common judgment in both suits. Therefore, as rightly submitted by the plaintiffs, the prayer of defendants No.7 to 10 for stay of hearing of present suit cannot be considered at this stage of matter. Hence, I pass the following order:-

ORDER

- 1] The present application shall stand rejected.
- 2] There shall be no order as to cost.

Place: Vaijapur  
Date : 09.03.2016

Sd/-  
(R.J.Pawar)  
Jt.Civil Judge,(Senior Division),  
Vaijapur

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	: M.B. Khonde
Court	: Jt.Civil Judge,S.D. Vaijapur
Date	: 09.03.2016
Judgment signed by the presiding officer on	: 09.03.2016
Judgment uploaded on	: 16.03.2016