

MHAU130000862017



ORDER BELOW EXH.99.IN R.C.S.No.60/2017
(Abdul Rafiq Vs. M.C.A.)

1. Defendant No.2 has filed this application for clubbing of this suit with R.C.S.No.16/2013.
2. Defendant No.2 has submitted that he has filed R.C.S.No.16/2013 for perpetual injunction to restrain present plaintiff from raising any sort of construction over suit property. Present plaintiff has committed encroachment over portion of road. During pendency of this suit, Municipal Corporation has issued notice to present plaintiff for demolishing construction made by him on road. Present plaintiff has challenged said notice before this court. Present plaintiff has claimed perpetual injunction to restrain Municipal Corporation from demolishing their structure over C.T.S. No.7457.
3. Defendant No.1 has submitted that both present suit and R.C.S.No.16/2013 are in respect of C.T.S. No.7456 and 7457 which is in respect of road. Subject matter of both the suits are same. Relief sought and issue involved in both the suits are identical. Hence the present suit be clubbed with R.C.S.No.16/2013.
4. Plaintiff has filed reply to this application at Exh.99-A. He has

strongly opposed this application. He submitted that there is no provision for clubbing of two civil suits. This application is after thought. This application is filed when amendment application filed by present defendant No.2 in R.C.S.No.16/2013 for relief of declaration was rejected by this court.

5. This case is already of five years old. Trial of this suit is already delayed. Defendant No.2 has filed this application just to further delay trial of this suit. Nature of this suit is totally different from R.C.S.No.16/2013. Cause of action in suit filed by present defendant No.2 is different from cause of action of this suit. Both the suits are different with different cause of action with different issues and different reliefs. Hence this application is liable to be rejected.

6. I heard Ld. Counsel for the parties. I perused this application and say submitted. I perused record of this case. R.C.S.No.16/2013 is near about nine years old. This suit was filed by present plaintiff in the year 2017. Defendant No.2 has filed this application after delay of five years after present plaintiff has filed this suit. In R.C.S.No.16/2013 plaintiff has claimed perpetual injunction to restrain defendant No.1 to 7 from raising any sort of construction over suit property. In this suit, plaintiff has claimed that two notices issued by Municipal Corporation are null and void and perpetual injunction restraining Municipal Corporation from demolishing their structure as mentioned in notice dated 06.03.2017.

7. Cause of action in this R.C.S.No.16/2013 accrued on 18.01.2013. Cause of action accrued in this suit on 22.03.2017. Scope of both the suits are different. R.C.S.No.16/2013 and this suit are five years old. Both the suits are to be decided on top priority basis as per direction of Hon'ble High Court. In this case plaintiff has examined his first witness on 05.11.2019. At present this case is kept for further evidence of plaintiff. In case this application for consolidation of suit is allowed, it will further delay both the proceedings.

8. In both the suits plaintiffs are different. In both the suits, plaintiffs will have to adduce their evidence separately. Defendant No.2 has failed to give sufficient explanation why it is necessary to consolidate both the suits. This court is keeping both the suits on same date. This court can decide both the suits on the same day separately to avoid conflicting judgments. If this application is allowed, it will embarrass or delay the trial of the suit. Hence I consider that this application is liable to be rejected. Therefore I pass this order.

ORDER

This application is hereby rejected.

Date :- 04.08.2022
Place :- Aurangabad.

(Smt. S.N. Morwale),
Civil Judge Senior Division
(Corporation Court), Aurangabad.

R.C.S.No.60/2017
Abdul Rafiq Vs. M.C.A.
Order below Exh.99.

CERTIFICATE

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

Name of the Stenographer	: Varsha Ajit Andurkar
Court	: C.J.S.D. (Corporation Court), Aurangabad.
Date	: 04.08.2022
Order signed by the presiding officer on	: 04.08.2022
Order uploaded on	: 04.08.2022