

MHAU130000532021



ORDER BELOW EXH.16 IN RCS NO. 27 OF 2021
(Muktanand Vs. Umesh)

1. Defendant no.1 to 4 have filed this application for stay of present suit till disposal of Spl.C.S. No.26/2010.
2. Defendant no.1 to 4 have submitted that defendant no.5 has filed Spl.C.S. No.26/2010 A.M.C. Vs. Sk. Hamid in which the father of defendant no.1 to 4 is defendant no.9. Plaintiff has already delegated all legal and property rights to municipal corporation by executing registered relinquishment deed on dated 25-02-2016. On the basis of powers delegated by the said society, municipal corporation has already filed Spl.C.S. No.26/2010 A.M.C. Vs. Sk. Hamid.
3. Defendant no.1 to 4 have submitted that when the suit filed by defendant no.5 regarding same property and same relief is pending before this Court, plaintiff has no locus standi to file this suit. Unless and until suit filed by corporation in the year 2010 about the suit property is decided on merit, this suit is liable to be stayed as per Section 10 of C.P.C.
4. Plaintiff has given hand written say. Plaintiff has submitted that present plaintiff is not a party to Spl.C.S. No.26/2010. Therefore, Section 10 of C.P.C. is not applicable to facts of present case.

Plaintiff has submitted that nothing is on record to show that the relief as well as scope of inquiry in both the suits are identical. Hence, this suit can not be stayed. At the most, trial of both the suits can be taken up simultaneously. Plaintiff has filed this suit based on their independent right. Plaintiff is not claiming through any of the parties of Spl.C.S. No.26/2010. Hence, this application is liable to be rejected.

5. I heard Ld. counsel for the parties. **Ld. counsel for plaintiff has relied on following case laws :**

1) Anjuman E Shiate Ali And Another Vs. Gulmohar Area Societies Welfare Group And Others [2020 AIR (SC) 2011]

2) Sanjeev Indravadan Dani Vs. Rupal Sanjeev Dani [2010(1) Mh.L.J. 918]

3) Ravikumar Shrichandji Kalra & Ors. Vs. Pradeepsingh Sunderlal Chouhan & Ors. [2012(1) ALL MR 170]

4) Jawahar Premraj Mutha Vs. Ramesh Premraj Mutha [Laws (Bom)-2011-9-8]

These case laws are not applicable to facts of the present case.

6. I perused this application and say submitted. I perused record of this case. In the present case plaintiff has failed to file certified copies of pleadings of Spl.C.S. No.26/2010 A.M.C. Vs. Sk. Hamid. Hence, I could not perused the same. When plaintiff is seeking any relief, burden of proof is on plaintiff to produce all necessary documents for perusal of the Court. Defendant can not insist Court to call the record of Spl.C.S. No.26/2010.

7. In the present case plaintiff has contended that he is not party to Spl.C.S. No.26/2010. Plaintiff has also contended that he is not claiming through parties to Spl.C.S. No.26/2010. As per Section 10 of C.P.C.

"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 between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed."

8. This section is applicable to facts of the present case. In the present case, defendants have failed to prove that previously instituted suit i.e. Spl.C.S. No.26/2010 is between the same parties or between parties under whom they are claiming. Therefore, I consider that Section 10 of C.P.C. is not applicable to facts of the present case. Conduct of defendant no.1 to 4 shows that they are deliberately trying to prolong the proceeding. Hence, I consider that this application is liable to be rejected. Therefore, I pass this order.

ORDER

This application is hereby rejected with costs.

Date : 11/11/2021

Sd/-
(Smt. S. N. Morwale)
Civil Judge (Senior Division)
(MCA Court) Aurangabad.

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	: Manjushri S. Salve.
Court	: C.J.S.D. (Corporation Court), Aurangabad
Date	: 11-11-2021
Order signed by the presiding officer on	: 11-11-2021
Order uploaded on	: 12-11-2021