

**ORDER BELOW EXH. 1**

(Passed on 14<sup>th</sup> December, 2021)

As per order passed below Exh. 1 dated 14-12-2021 the plaintiff as well as the defendant are directed to advance hearing on the point that as to why the present suit should not be stayed as per section 10 of the Code of Civil Procedure, 1908. Accordingly, heard Mr. M. S. Shahare for the plaintiff and Mr. P. B. Ganboir for the defendant at length.

2. Advocate Mr. M. S. Shahare for the plaintiff argued that the plaintiff is an owner and possessor of the suit property by virtue of sale deed bearing No. 223/2012. The advocate further argued that the defendant is disturbing a peaceful possession of the plaintiff over the suit property, therefore, the plaintiff filed the present suit for perpetual injunction and declaration against the defendant. The advocate further argued that the defendant filed Regular Civil Suit No. 9/2019 against the plaintiff in respect of suit property for declaration and perpetual injunction before this Court. The advocate further argued that Regular Civil Suit No. 9/2019 is still pending before this Court. The advocate further argued that reliefs claimed in the present suit and Regular Civil Suit No. 9/2019 are different, therefore, present suit is maintainable.

3. Advocate Mr. P. B. Ganboir for the defendant argued that deceased Meerabai Jagannath Gowardhan was an original owner of the suit property. The advocate further argued that the defendant is an owner of the suit property by virtue of

inheritance. The advocate further argued that the defendant and his brothers are in actual and physical possession of the suit property. The advocate further argued that the defendant filed Regular Civil Suit No. 9/2019 against the plaintiff for declaration and perpetual injunction in respect of the suit property, therefore, the present suit is hit by principle of re subjudice as per section 10 of the Code of Civil Procedure, 1908. The advocate further argued that the present suit is not maintainable.

4. Before moving towards the record it is proper to reproduce section 10 of the Code of Civil Procedure, 1908 which is as follows :-

**Stay of Suit Section 10 :-** *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, or in any court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*

5. Perused the record. After perusal of record it appears that the plaintiff filed the present suit for declaration and perpetual injunction against the defendant in respect of the suit property.

6 Perused the record. After perusal of record it appears that the defendant filed a xerox copy of Regular Civil Suit No. 9/2019 at

serial No. 1 along with list of document below Exh. 19 of dated 18.07.2020. After perusal of xerox copy of Regular Civil Suit No. 9/2019 it appears that the defendant filed Regular Civil Suit No. 9/2019 for declaration and perpetual injunction in respect of the suit property against the plaintiff. However, after perusal of record of the present suit as well as xerox copy of Regular Civil Suit No. 9/2019 it appears that parties to both suit and subject matter of both suit are same. It is pertinent to note here that the plaintiff himself admitted in the present suit that the defendant filed Regular Civil Suit No. 9/2019 against him in respect of the suit property.

7. Section 10 of the Code of Civil Procedure envisage that no court shall proceed with 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. The object of Section 10 is to prevent multiplicity of proceeding with regard to the same subject matter and to avoid contradictory judgments being given by the same court.

9. Regular Civil Suit No. 9/2019 is filed in the year of 2019, whereas, the present suit is filed on 23-06-2020. Therefore, it is clear from the record that the present suit is subsequently filed. Subject matter and parties in the present suit and Regular Civil Suit No. 9/2019 are directly and substantially the same. Therefore, as discussed above it is clear that the present suit is hit by the principle

of res subjudice as per section 10 of the Code of Civil Procedure, 1908. Therefore, as discussed above, considering facts, circumstances and an object of Section 10 of Code of Civil Procedure, 1908 it is proper to stay the present suit. Therefore, I proceed to pass the following order :-

**ORDER**

The present suit is stayed till the final decision of Regular Civil Suit No. 9/2019.

Date:- 14-12-2021

Mohmad Wasim Akram  
Mohmad Jalal Sheaikh  
Civil Judge Junior Division, Deori.