


MHJN040026532024 	R.C.S. No.333/2024 Sudhakar Vs Tirtharaj & Ors.
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Order Below Exh.12
(Passed on 13.01.2025)

1. Present application is filed by defendants with prayer to stay the present suit under Section 10 of the Code of Civil Procedure (For short C.P.C.).
2. The defendants have contended that the defendant No.1- Tirtharaj Jaykar has already filed Regular Civil Suit No.329/2024 against the present plaintiff in respect of land situated at village Taka, Taluka Ambad, District Jalna, bearing Gat No.286 to the extent of 8 Acre for Specific Performance of Contract of the sale dated 27.03.2018 and perpetual injunction against present plaintiff and brother Haribhau. R.C,S. No.329/2024 was filed on 11.11.2024 wherein brother of the present plaintiff appeared and received copy of plaint. Sale agreement dated 27.03.2018 is already filed with that suit.
3. It is further contended that suit filed by the defendants against the present plaintiff is in respect of same agricultural land which is the suit property of the present suit and between the same contesting parties. Suit property is same in both the suit and parties are also same. Present suit has been subsequently filed only to counterblast the defendants suit. Therefore, present defendants are praying to stay this suit to avoid multiplicity of litigation and conflicting decisions.
4. Plaintiff filed say overleaf the application and submitted that application under Section 10 of CPC is not tenable at this stage. The

defendants have not filed their written statement. Similarly, nature of the suit and cause of action in both the suits are different. Therefore, he prayed for rejection of application.

5. Heard both sides. The defendants have filed on record copy of plaint in R.C.S. No.329/2024, copy of agreement dated 27.03.2018, documents in respect of proceeding before the Tahesildar and copy of Panchnama by Talathi, Copy Anticipatory Bail Petition No.35/2024 alongwith Bail order. On the contrary, Ld. Advocate for the plaintiff have relied upon copy of complaint in R.C.C. No.391/2024 and consent letter dated 11.03.2020. Both parties relied upon Judgments of Hon'ble Supreme Court and Hon'ble Bombay High Court which are dealt with in foregoing paragraphs.

6. Upon hearing, the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

Sr.No.	Points	Findings
1.	Whether the defendants prove that this suit is required to be stayed under Section 10 of the C.P.C.,as prayed for ?	No.
2.	What order ?	Application is rejected

Legal Position Under Section 10 of the C.P.C.

7. Before proceeding to discuss the merits of the application it is worthwhile to go through the relevant provision under Section 10 of the C.P.C., and the legal principles led down by the Hon'ble Supreme Court in leading decisions.

8. Section 10 of the C.P.C. reads as follows :-

10. Stay of suit – 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.

Explanation - The pendency of a suit in a foreign Court does not preclude the courts in India from trying a suit founded on the same cause of action.

9. In the case of National Institute of Mental Health & Neuro Sciences v C. Parameshwara, reported in 2005 (Supp.) Bom. C.R. (S.C.) 181 : 2005 (2)S.C.C. 256 the Hon'ble Supreme Court has specifically held that the subject-matter in both the suits should be identical. The Supreme Court has held as under :

“The fundamental test to attract section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “ directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”

In the present case on applying the aforesaid test which is laid by the Apex Court firstly what is required to be seen is that both the suits are between the same parties and are having identical or synonymous cause of action. Considering the facts of the present case, I am of the opinion that it is not so.

10. Section 10 thus mandates the Court not to proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties. The provisions of stay in this section are mandatory. The object of this section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. Though the heading of this section is “stay of suit”, it does not operate as a bar to the institution of the subsequent suit. It is only the trial of the suit that is not to be proceeded with.

Reasons as to Point No.1

11. In this suit applying the aforesaid tests under Section 10 of the C.P.C. and those which are led down by the Hon'ble Supreme Court, it is required to be seen whether this suit can be stayed under Section 10 of the C.P.C. And considering the facts of this case, I am of the firm opinion that this suit cannot be stayed under Section 10 of the C.P.C. The reasons are :-

a) Firstly, the cause of action in first suit and this suit is different. In the first suit, cause of action which has been sought to be established was on the basis of denial to execute registered sale deed in May 2024 and on 14.10.2024. In the present suit, the cause of action is based on the obstruction by the defendant on 27.10.2024. Therefore, it can not be said by any stretch of imagination that the causes of action in the first suit and this suit are identical.

b) Secondly, turning to the aspect, viz. whether reliefs claimed are identical and whether it can be said that the issue involved in both the suits is wholly or substantially the same, it is also not identical. In the first suit, the plaintiff (defendant No.1 herein) had prayed Specific

Performance of Agreement to Sale dated 27.03.2018 and for Permanent Injunction. However, in the present suit, the plaintiff is seeking declaration as to his ownership and possession over the suit property and permanent injunction against the defendants. It is crystal clear that the prayers made in this suit are not made or agitated in the first suit by the plaintiff or the defendants. Thus, the issue as to the prayers made by the plaintiff in this suit, is not the subject matter of the issue in the first suit. Hence, it can not be said that the reliefs sought and the issues involved in the first and this suit are identical.

c). Ld. Advocate for the defendant has relied upon Judgment of ***Hon'ble in Padmabai Patil Vs Shiakh Shahadulla (2010 (6) ALL MR 785)*** wherein order of staying subsequent suit was upheld by the Hon'ble High Court.

Perused Judgment. Considering the factual aspect in both the cases, it is pertinent to note that in the case before Hon'ble High Court First suit was filed for execution of Specific Performance and petitioners have filed subsequent suit for permanent injunction. Similarly, one suit was pending before Hon'ble C.J.S.D, Court and another suit was filed before C.J.J.D. court. Therefore, Ld. C.J.J.D. had stayed Regular Civil Suit pending before him under Section 10 of the C.P.C.

However, in the case in hand, the plaintiff has prayed for declaration as to his ownership, possession and Permanent Injunction and the defendants have filed earlier suit for Specific Performance and Permanent Injunction. So, parties as well as cause of action and prayer in both the suits are different. Hence, Judgment of Hon'ble Bombay High Court can not be said to be applicable.

12. In short, the claim as well as the causes of action in the first suit and this suit are not identical, the reliefs sought and the issues involved in the first and this suit are also not identical. It is also to be noted that in the first suit only defendant No.1 herein ie. Tirtharaj Jaykar is plaintiff and Sudhakar and Haribhau are two defendants. However, in the present suit, only Sudhakar is the plaintiff and there are total 8 defendants. This application, thus, do not fall squarely within the ambit of Section 10 of the C.P.C. and it is not necessary to stay the same. Accordingly, I answer Point No. 1 in the negative and proceed to pass the following order -

ORDER

1. The application Exh. 12 is rejected.
 2. The costs will be in the cause.
- (Pronounced in open court.)

Date:13.01.2025

Jt. Civil Judge (J.D.),
Ambad

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original Order.

Name of Steno : S.M. Sapkal

Name of the Court : Judicial Magistrate,F.C., Ambad

Date : 13.01.2025

Sd/-
Signature of Stenographer