

R.C.S. NO. 09/2015
Waman Vs. Laxman & Others.

ORDER BELOW EXH.NO. 36
(Passed on 09.02.2023)

1] By this application, the defendant No.1 prayed to try RCS No. 95/2014 with this suit and till then prayed to stay the hearing of application of temporary injunction.

2] Read application and say. Heard both sides. Perused record of the case.

3] It is contended by defendant No. 01 that he filed RCS No. 95/2014 on 08.10.2014 against the present plaintiff. The suit is in the respect of 0.45 HR agricultural land out of Gat No. 50, total area 13.16 HR, well situated therein and water of well. In the said suit more than 50 percent evidence is adduced by the plaintiff. In the said suit, the plaintiff and defendant alleged that the properties are their self acquired properties. But, in this suit the plaintiff came with the case that the suit properties are belonging to joint Hindu family. The present suit is filed for partition. The plaintiff did not plead about temporary injunction which was essential to mention. Therefore, unless the said issue is not decided, and if any hearing will be conducted on application of temporary injunction, then it will directly affected to the result of RCS 95/2014 which is pertaining to the perpetual injunction. Wherein the application of temporary injunction Exh. 5 is already rejected. Therefore, it is necessary to try both suits simultaneously and till then not to take the hearing of application of temporary injunction. Accordingly, prayed to allow the application.

4] The plaintiff resisted the application by say filed overleaf the application on the grounds that the present suit is filed for

partition. Wherein the temporary injunction is claimed for restraining the defendants from alienating the suit properties. Therefore, the reliefs claimed in both suits are different. Therefore, question of trying both suits together does not arise. Hence, plaintiff prayed to reject the application.

05] During the course of hearing both advocates submitted that the properties in both suits are different and the cause of action in both suits are different. Moreover, the reliefs claimed in both suits are appears to be different. The major contention in this application is that the plaintiff claimed that the suit properties are self acquired and in this suit, the plaintiff came with the case that the suit properties are joint Hindu family property. Therefore, to avoid multiplicity, suits are required to be tried together. It is worth to mention here that whether the suit properties are self acquired or joint Hindu family property are different aspect and it will be decided on different footing. In this application, the plaintiff is praying to restrain the defendants for alienating the suit property until final disposal of suit.

06] Moreover, the RCS No. 95/2014 is for the perpetual injunction and when the properties in both suits are different, cause of action is different and reliefs are different, then there is no question of adverse effect of the order passed if any in this suit on the application of temporary injunction. Therefore, hearing on the application of temporary injunction can not be stayed. Moreover, the reliefs, cause of action and the suit properties in both suits are different from each other. Therefore, question of trying both suits together does not arise. Under such circumstances, I do not find substance in this application, hence the application is liable to be rejected. In this backdrop, I pass the following order.

ORDER

The application (Exh.36) is hereby rejected.

(Order is dictated and pronounced in open Court.)

Place : Partur

Dated : 09-02-2023

(Liladhar D. Korde)

Civil Judge (Junior Division)

Partur.

- : C E R T I F I C A T E : -

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Stenographer :- Vaibhavsing N. Thakur

Court Name :- Liladhar D. Korde, C.J.J.D., Partur

Date of decision :- 09.02.2023

Order signed by P.O. on :- 09.02.2023

Order uploaded on :- 11.02.2023