

MHKO050015272012 	<u>ORDER BELOW</u> <u>EXH.56 IN</u> Regular Civil Suit No.662/2012	Datta Appa Pujari Vs. Laxman Maruti Ghatage
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(Passed on 13th day of January, 2023)

1. Defendant Nos. 5 to 19 have filed this application seeking stay of the suit under section 10 of the Code of Civil Procedure. The pendency of Regular Civil Suit No.583/2012 is the reason put forth by the defendant nos. 5 to 19 to stay the present suit.

2. It is contention of defendant nos. 5 to 19 that the plaintiffs have filed present suit for specific performance of contract. According to defendant nos. 5 to 19, they have filed civil suit no. 583/ 2012 for declaration and partition, which is pending before shri G.A. Ghule 3rd Joint Civil Judge Junior Division, Ichalkaranji against plaintiffs and defendant nos. 1 to 4. It is contention of defendant nos. 5 to 19 that Regular Civil Suit No. 583/2012 is pending and the present suit is based on same suit property. Therefore, the present suit deserves to be stayed under section 10 of Civil Procedure Code,1908. Hence, filed this application.

3. The plaintiffs filed reply to the instant application vide Exh.57. Plaintiffs are not disputed that the present suit filed for

specific performance of contract in respect of suit property. According to plaintiffs, the matters in issue in the two suit are not entirely the same or identical. Lastly they requested application be rejected.

4. Heard the learned Advocate Shri M.S. Kulkarni for defendant nos. 5 to 19 and the learned Advocate Shri M. D. Jamadar for plaintiffs. Besides oral arguments, both the learned Advocate filed written notes of argument on record.

5. On perusal of record it is seen that plaintiffs have filed this suit on 31/08/2012. Admittedly this suit is a subsequently instituted suit. The learned counsel for plaintiffs argued that there is no necessity to stay the present suit. On the contrary, the learned counsel for defendant nos. 5 to 19 submitted that previously instituted suit is pending before Shri G.A. Ghule 3rd Joint Civil Judge J.D. Ichalkaranji, therefore the present suit be stayed under section 10 C.P.C. It is admitted fact that the civil suit no. 583/2012 is pending before Shri G. A. Ghule 3rd Joint Civil Judge J.D. Ichalkaranji of the same suit property.

6. The Hon'ble Court in the case of **Ashok Kumar Yadav ..vs.. Noble Designs Pvt. Ltd.** reported in **AIR 2006 Calcutta 237** wherein it has been held that the “if the parties in the previously instituted suit are parties in the subsequently instituted suit, then any aggrieved party can take out an application under section 10 seeking stay of trial of the subsequently instituted suit on the ground that the matter in issue in it is directly and substantially in issue in the previously instituted suit”. I have gone with the ratio laid in the case cited supra and it applies to

the instant case.

7. Further, for the application of Section 10 of C.P.C., the following conditions must be satisfied -

- i. There must be two suits, one previously instituted and the other subsequently instituted.
- ii. The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.
- iii. Both the suits must be between the same parties or their representatives.
- iv. The previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other court in India or in any court beyond the limits of India established or continued by the Central Government or before the Supreme Court.
- v. The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.
- vi. Such parties must be litigating under the same title in both the suits.

8. As soon as the conditions are satisfied, a court cannot proceed with the subsequently instituted suit since the provisions contained in section are mandatory and no discretion is left with the court. In present suit all the above conditions are satisfied.

9. The object of the rule contained in this section is to prevent court of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigation in respect of the same cause of

action, the same subject matter and the same relief. The policy of law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief. The section intends to protect a person from multiplicity of proceeding and to avoid a conflict of decisions.

10. Thus, in view of the discussion noted in foregoing paras, the settled provisions as envisaged in section 10 of C.P.C. and the ratio laid down in the cases cited supra, I proceed to pass the following order:-

ORDER

1. Application Exh.56 is hereby allowed.
2. Present suit is stayed as per Section 10 Civil Procedure Code, 1908 till the decision of Regular Civil Suit 583/2012 which is pending before Shri G. A. Ghule 3rd Joint Civil Judge J.D., Ichalkaranji.

Date- 13/01/2023
Ichalkaranji

(Sanjay D. Wankhede)
5th Joint Civil Judge Junior Division,
Ichalkaranji Dist. Kolhapur.