

Order below Exh. 27 in Spl. Civil Suit No. 27/2012:-

- 1) Defendant No.6 has filed this application to stay this suit.
- 2) It is contended by defendant no.6 that Spl.C.S.No. 11/2012 is pending before this Court between him and defendant No.1 for specific performance of agreement. The suit property belongs to defendant No.1. He executed mortgage deed for the area ad-measuring 0.40R. Subsequently, he executed mortgage deed for the area ad-measuring 0.10 R. The defendant No. 6 has been in possession of both properties from the date of mortgage deeds. The defendant No.1 agreed to sale suit property to the present defendant for consideration of Rs.9,50,000/-. He received amount of Rs.1,55,000/- towards consideration and agreed to accept Rs.4,95,000/- at the time of sale deed by executing an agreement dated 18.5.2011. Defendant No.1 confirmed the possession of this defendant. He has accepted amount of Rs.6,50,000/-. The defendant No.1 started to create third party interest in suit property for higher consideration. This defendant published notice in daily news paper Lokmat and Mahankarya on 4.2.2012. The defendant No.1 replied said notice on 12.2.2012 and denied agreement to sell. Hence, he has filed suit for specific performance of agreement bearing Spl.C.S.No. 11/2012. The defendant No.1 has been restrained from alienating suit property in that suit. The defendant Nos. 2 to 5 have no concerned with the suit property. The defendant No.1 has obligation to execute sale deed. The said suit is pending. To avoid multiplicity of proceeding the present suit is required to be stayed till decision of Spl.C.S.No. 11/2012. Hence, he prays for stay of this suit.

3) Plaintiff has objected this application on the ground that, the dispute between this suit and Spl.C.s.No. 11/2012 is different. The present plaintiff is not party to that suit. The parties in that suit and this suit are distinct. He has contended that, there is collusion between defendant Nos. 1 to 6. Hence, there is no necessity to stay this proceeding. Hence, he prayed that application be rejected.

4) Heard learned Advocate for the defendants. He has submitted that, the present suit and Spl.C.S.No. 11/2012 relates to the same subject matter. Plaintiff is subsequent transferee and he has no right to decide his rights earlier than the decision of Spl.C.S.No. 11/2012. He has further submitted that, reliefs and issues are overlapping of each other. Therefore, he has prayed to stay this suit.

5) The learned Advocate for plaintiff has submitted that, the present plaintiff is not party to Spl.C.S.No. 11/2012. He has agitating his independent rights on agreement dated 3.3.2012. The parties to both suits are different. Therefore, he has submitted that, the application be rejected.

6) An agreement in the suit is dated 3.3.2012 between defendant No. 1 and plaintiff. An agreement between defendant No. 6 and defendant No. 1 is dated 18.5.2011. It is pertinent to note that, a party who is claiming the stay under section 10 of the Civil Procedure Code has to file the copy of the plaint before the Court to claim such relief. However, the defendant No. 6 has not filed the copy of the plaint in Spl.C.S.No. 11/2012 before this Court to ascertain and compliance of

requirements of section 10 of the Civil Procedure Code. Therefore, in absence of copy of plaint in Spl.C.S.No. 11/2012 the court cannot ascertain who are the parties to that suit and this suit, which is subject matter of that suit and this suit and really the relief is overlapping on each other in both suits. Therefore, in absence of copy of nude application for stay cannot be considered. Therefore, in view of such lacunae on the part of defendant No.6, this application is required to be rejected in limin. Hence, I pass the following order.

Order

The application at Exh. 27 is rejected.

Sd/-

Date : 14-12-2017.

(J.S.Mali)
Civil Judge Sr. Division, Jaysingpur.