

MHKO070019812022

Order below Exh.11 inRegular Civil Suit No.302/2022.

Sikandar Amin Nadaf POA Dauad
Sikandar Nadaf Vs. Shahapari Yunus
Dange

This is an application filed by defendant Nos. 1 to 5 under Section 10 of the Code of Civil Procedure (hereinafter referred to as CPC), seeking a stay of the present suit on the ground that another suit for injunction, bearing R.C.A. No. 50/2015, is pending before the Hon'ble District Court, Jaysingpur

02) The defendants stated that the plaintiff had earlier filed R.C.S. No. 150/2010, which was dismissed on 04/04/2015. In that suit, an issue regarding the possession of the plaintiff was framed, and the finding was recorded in the negative. The Court held that the plaintiff was not in possession of the suit property. The plaintiff has preferred an appeal against that decision. Hence, according to the defendants, the present suit is not maintainable.

03) Per contra, the plaintiff, by filing his say at Exh. 29, denied the contentions of the defendants. He contended that the cause of action and parties in this suit are different. Therefore, Section 10 of CPC is not applicable. Hence, he prayed for rejection of the application

04) After hearing the arguments of both sides and perusing the written arguments filed by the defendants, the following

points arise for my determination. I have recorded my findings thereon for the reasons stated below :

Sr. No.	Points	Findings
1.	Whether present suit is required to be stayed as per Section 10 of Code of Civil Procedure?	.. In the Negative
2.	What order?	.. As per final Order.

REASONS

As to Point No. 1 and 2 :-

05) Under Section 10 of Civil Procedure Code, a suit may be stayed on fulfillment of the following conditions.

- 1) *There are two suits one previously instituted and the other subsequently instituted.*
- 2) *the matter in issue in the subsequent suit is directly and substantially in issue in the previous suit.*
- 3) *The parties to both the suits are same.*
- 4) *The previously instituted suit must be pending.*
- 5) *The Court in which the previous suit is pending has jurisdiction to grant the relief claimed in the subsequent suits.*
- 6) *Both the parties are litigating under the same title in both the suits.*

06) I have perused the documents filed by the defendants at Exh. 36. On perusal of the plaint in the present suit, it appears that the plaintiff has filed this suit for perpetual injunction on the ground that the suit property was given to him by Sikander Elahi Aarwade by executing an agreement dated 19/02/1982. On the same day, possession of the suit property was also handed over to the plaintiff. In R.C.S. No. 150/2010, the defendants had contended that they had executed a power of attorney in favour of Kalander Aarwade, who thereafter transferred the suit property to Shahapari Yunus Dange by executing a *Hibbanama*. Now, Shahapari Yunus Dange (defendant No.1 herein) along with defendants Nos. 2 to 5 is obstructing the plaintiff's possession. It is further stated that defendant No.1 has also filed an application for electricity and water connection. Therefore, the plaintiff has filed the present suit seeking injunction against defendants Nos. 1 to 5 from obstructing his possession, and also restraining defendants Nos. 6 and 7 from providing electricity and water connection to defendants Nos. 1 to 5.

07) On perusal of the earlier suit, i.e., R.C.S. No. 150/2010, it is seen that it was also filed for perpetual injunction. Though the suit property in both suits is the same, the parties are different. In both suits the plaintiff claims possession of the suit property on the basis of the agreement dated 19/02/1982. However, in the earlier suit the plaintiff had sought injunction against the legal heirs of deceased Ilahi Aarwade, whereas in the present suit the plaintiff claims that the defendants are obstructing

his possession on the basis of the *Hibbanama*. Thus, the matter in issue in R.C.S. No. 150/2010 is not directly and substantially in issue in the present suit. Section 10 of CPC applies only when the subject matter and the parties in both proceedings are identical. Needless to say, the causes of action in both suits are also different.

08) No doubt, in R.C.S. No. 150/2010 the issue of possession was involved. But according to the plaintiff, the present obstruction is by the defendants who were not parties to the earlier suit. As well as the plaintiff has also sought relief against defendants Nos. 6 and 7. Therefore, the matter in issue in the present suit is neither directly nor substantially the same as that in R.C.S. No. 150/2010.

09) Considering the nature of the reliefs claimed, the causes of action, the parties, and the matters in issue in both suits, it is evident that they are different from each other. Therefore, after considering the entire discussion, it is clear that the matter in issue in the present suit is not directly and substantially the same as that involved in R.C.S. No. 150/2010. Accordingly, the present application is not tenable in the eyes of law. Under these circumstances, it would not be proper to stay the present suit. Hence, I answer Point No. 1 in the **negative** and proceed to pass the following order -

ORDER

- 1) Application Exh. 11 is hereby rejected.
- 2) No order as to costs.

Jaysingpur

Date : 17/10/2025

(M. S. Patil)

2nd Jt. Civil Judge Jr. Divn.,
Jaysingpur.