

MHKO100013282016



**Order passed below Exh. 41**

This is an application under section 10 of the Civil Procedure Code for stay of suit.

2. Read the application and say filed thereon at Exh. 42. I have heard Ld. Advocates of both the sides.

3. Defendant no. 2 has filed RCS No. 205/2018 against plaintiff and other defendants for partition, declaration and perpetual injunction. It is the contention of the defendant no. 2 that suit property is subject matter in RCS No. 205/2018. Matter in issue in RCS No. 205/2018 is same in this suit. So, two contrary views can come on the matter in issue. So, prayed for stay of this suit till final decision of RCS No. 205/2018.

4. Plaintiff stated in this say that, matter in issue in both the suits is different. Plaintiff filed this suit on 21/12/2016 and defendant no. 2 filed RCS No. 205/2018 on 21/12/2018. He prayed for joint trial of both the suits and rejection of this application.

5. I have considered the rival submissions and gone through the entire case record of both the cases. It reveals that, this suit i.e. RCS No. 59/2016 is filed earlier and thereafter RCS

No. 205/2018 is filed. This suit is filed for permanent injunction. It is the case of the plaintiff that partition took place between him and his brother Gopal Uparate i.e. father of defendant no. 2. The basic ingredient of sec. 10 is that, stay can be granted to the suit which is filed latter in time and when matter in issue is directly and substantially in previously instituted suit is same in latter instituted suit, i.e. also between the same parties or between parties under whom they or any of them claim litigating under the same title.

6. Present application is filed for stay of this suit till decision of RCS No. 205/2018. But as per scheme of sec. 10, previously instituted suit can not be stayed. If the parties and matter in issue in both the suits is same then latter instituted suit can be stayed. The parties in the both the suits are different, matter in issue is also different and as discussed above said suit is filed latter. So, this application can not be granted to stay the previously instituted suit. So, I pass following order.

### **ORDER**

1. Application is rejected.
2. Cost of this application in main cause.

Date 27/07/2023.  
Place : Gadhinglaj

D. M. Pawar  
2<sup>nd</sup> Jt. Civil Judge Jr. Division  
Gadhinglaj