

MHKO150001832012



R.C.S. No. 99/2012
Suresh vs. Ramchandra

Order passed below Exh. 62

This application is filed by defendant under Section 10 of C.P.C.

2. According to defendant, the plaintiff of present suit has filed present suit on 18.07.2012. The defendant has filed R.C.S. No. 122/2012 before Hon'ble Civil Judge, Senior Division, Gadhinglaj against plaintiff in respect of same suit property. The R.C.S. No. 122/2012 filed on 02.04.2012. Thereafter, that suit was return as plaint return and filed in this court and it was renumbered as R.C.S. No. 11/2020. The R.C.S. No. 11/2020 is previous suit. The parties and subject matter of both the suits are same. Therefore, the defendant prayed for stay of present suit till decision of R.C.S. No. 11/2020. The defendant lastly prayed for allowing application.

3. The plaintiff has filed his say. He denied all allegations, pleading and prayer of defendant. According to him, the R.C.S. No. 122/2012 was filed against State of Maharashtra and other revenue officers. It was disposed by Hon'ble Civil Judge, Senior Division, Gadhinglaj on 20.01.2017. The present suit is not same with R.C.S. No. 122/2012. The subject matter and issues in dispute is not same. He lastly prayed for rejection of application.

4. Heard learned Advocate Shri. K. G. Patil for defendant and Advocate Shri. G. J. Patil for plaintiff.

5. Perused application, say and record.

6. The R.C.S. No. 122/2012 that is present R.C.S. No. 11/2020 is on today's board. Therefore, the record of R.C.S. No. 11/2020 also perused.

7. On perusing plaint of present suit it appears that, the present suit is filed by plaintiff against defendant Ramchandra Patade and Pundlik Patade for perpetual injunction. The suit property is 1 H. 80 R. land from Gat No. 95/1 situated at village Ambade, Tal. Ajara.

8. On perusing plaint of R.C.S. No. 11/2020 it appears that, the defendant of present suit is plaintiff and that suit filed against plaintiff of present suit. The suit property is 3 H. 96 R. from Gat No. 95/1 situated at village Ambade. That suit was filed for perpetual injunction.

9. The plaint of present suit and R.C.S. No. 11/2020 shows that, the defendant no. 2 of present suit namely Pundlik Ramchandra Patade is not party in R.C.S. No. 11/2020.

10. The suit property of present suit is 1 H. 80 R. land and the boundaries are different from the boundaries of property mentioned in R.C.S. No. 11/2020. The 3 H. 96 R. land is subject matter of R.C.S. No. 11/2020.

11. The prayer of present suit shows that, the plaintiff has prayed perpetual injunction against defendant. The prayer of R.C.S. No. 11/2020 shows that, the defendant of present suit has prayed perpetual injunction against present plaintiff. The prayer shows that, the cause of action arose

to present plaintiff to present suit when defendant obstructed to him. The cause of action of R.C.S. No. 11/2020 (R.C.S. No. 122/2012) arose when defendant that is plaintiff of present suit obstructed to the defendant.

12. Both the parties have claimed their possession over their properties. These circumstance shows that, the plaintiff of present suit claimed injunction in his favour and burden of issues is on plaintiff of present suit. The prayer of R.C.S. No. 11/2020 shows that, the burden of issues is on defendant of present suit and defendant claimed relief against plaintiff. These circumstance shows that, the issues in present suit is not same with issues of R.C.S. No. 11/2020. The parties also different because the Pundlik Ramchandra Patade is not party in R.C.S. No. 11/2020. The cause of action arose to file present suit and R.C.S. No. 11/2020 is different. These all circumstance shows that, the issues of present suit is not directly and substantially in issue of R.C.S. No. 11/2020. The issues are different, the claim of litigant is different. The parties have claimed independent their rights and possession over their property. In this circumstance I conclude that, the issues of present suit is not same with R.C.S. No. 11/2020.

13. The defendant prayed relief of perpetual injunction against plaintiff. In present case the plaintiff prayed relief against defendant for perpetual injunction. Thus, it comes on record that, relief of defendant in R.C.S. No. 11/2020 is different from present suit.

14. Considering the above discussion I am coming to conclusion that, the cause of action of both suits are different. The parties are different. The reliefs are also different. Therefore, the ingredients of section 10 of C.P.C. are not satisfied. Therefore, I am not found any substance in the application. The application needs to be rejected. Hence, I pass the following order.

ORDER

1. The application Exh. No. 62 is rejected.
2. Considering peculiar circumstance, there is no order as to cost.

Date : 15.12.2022.

(S. P. Jadhav)
Civil Judge J.D., Ajara.

Certificate

I affirm that the contents of this P.D.F file Judgment / Order are same, word to word, as per the original Judgment / Order.

Name of the Stenographer	Mrs. Y.S. Chavan
Name of Court	C.J.J.D,. Ajara
Judgment / Order dictated on	15-12-2022
Judgment / Order typed on	15-12-2022
Judgment / Order signed by the P. O. on	15-12-2022
Judgment / Order uploaded on	15-12-2022