

MHKO150003882020



R.C.S. No. 49/2020
Vithoba vs. Mhankali

ORDER PASSED BELOW EXH. 53

This application is filed by defendant No. 3 and 4 under section 10 of C.P.C.

2. According to defendants, they have filed R.C.S. No. 35/2020 for declaration and perpetual injunction against plaintiff. That suit was previously filed. The matter in dispute of present suit and that suit are same. The parties of present suit and that suit are same. The cause of action and issues of both the suits are same. Therefore, they prayed for stay of present suit till decision of R.C.S. No. 35/2020.

3. The plaintiff fails to file his say.

4. Heard learned advocate Shri. S. R. Powar for defendant No. 3 and 4 and advocate Shri. A. S. Farakte for plaintiff.

5. Perused application and record.

6. On perusing plaint of present suit it appears that, the plaintiff pleaded that, the suit property that is 0.40 R. land from Gat no. 186 was exclusively owned by him. And he is owner and possessor of that property. The defendants are not concern with that property and he has prayed perpetual injunction against defendant. Further, present suit filed for fixation of boundaries in respect of 0.40 R. property situated in Gat no. 186.

7. On perusing plaint of R.C.S. No. 35/2020 it appears that, the defendant no. 3 and 4 of present suit are the plaintiffs in that suit. They have pleaded that, the suit property of present suit and other properties are partitioned between Hindu joint family members. The partition effected in the year 1995. They have owned that property. They have prayed declaration as per partition effected in the year 1995 and prayed perpetual injunction.

8. Considering the pleading of R.C.S. No. 35/2020 and present suit, it appears that, the R.C.S. No. 35/2020 was previously filed. The plaintiff of present suit prayed perpetual injunction in respect of 0.40 R. land. The R.C.S. No. 35/2020 shows that, the present suit property and other properties are involved in that suit. It means, the suit property of present suit is not same with R.C.S.No. 35/2020. Because the other properties of R.C.S.No. 35/2020 is not disputed in present suit.

9. The parties of R.C.S. No. 35/2020 shows that, the defendant no. 1 to 6 of that suit are not parties in this suit. Therefore, the parties of R.C.S.No. 35/2020 is not same with present suit.

10. The issues of R.C.S. No. 35/2020 is in respect of partition effected in the year 1995, the ownership of defendant no. 3 and 4 and possession of defendant no. 3 and 4. The issues of present suit is in respect of ownership and possession of plaintiff over 0.40 R. land from Gat no. 186. In these circumstances, I conclude that, the issues also not same of both suits.

11. Considering all above circumstances, I am coming to conclusion that, the issues, parties and dispute between parties of both suits are not same. The cause of action also both the suits are not same.

12. The advocate for defendant relied on ratio of **Hon'ble Delhi High Court decided in AIR 1999 Delhi 139 Mehta Gandhi vs. Shri Pipes Ltd.** On perusing the facts of that case, it appears that, in that case the issue of suit are same. But in above discussion I found that, the issues of both suits are not same. The cause of action of the both suits are not same. The properties of both suits are not same. Therefore, the ratio of Hon'ble Delhi High Court is not helpful to the defendant.

13. Considering all above discussion, I am coming to conclusion that, the issue in both the suits are different. The parties and properties are different. The prayer of the both suits are different. The matter in issue of both the suits are not directly and substantially in issue. 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 is rejected.
2. Considering peculiar circumstances, there is no order as to cost.

Date : 17.02.2022.

(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	17-02-2022
Judgment / Order typed on	17-02-2022
Judgment / Order signed by the P. O. on	17-02-2022
Judgment / Order uploaded on	22-02-2022