


<u>MHKO190007802023</u> 	<u>ORDER PASSED BELOW EXH.21</u> IN <u>R.C.S No.291/2023</u> Ajit Aaba Patil Vs. Sanjay Mahadev Dakare etc.9 (Date:18/12/2023)
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Defendant Nos.1 and 2 have filed the present application under Section 10 of the Code of Civil Procedure for stay of the suit.

2. The plaintiff has filed his say on the application itself and strongly opposed the application. The plaintiff prayed for rejection of the application.

3. Heard both the sides at length.

4. The Ld. Advocate for defendants submitted that the plaintiff has filed the present suit for declaration and perpetual injunction against defendants. The present suit is filed in respect of Gat Nos.114/1, 114/2, 114/3 and 114/4. The plaintiff claims joint possession over the suit properties. The father of plaintiff has filed RCS No.155/2023 in respect of Gat Nos.114/1, 114/2, 114/3, 114/4 and other properties for partition. In the said suit, the present plaintiff is defendant No.3. In the said suit, the matter in issue is about the share of the plaintiff and defendants in Gat Nos.114/1, 114/2, 114/3 and 114/4. The matter in issue in present suit and in RCS No.155/2023 is same and one. If the trial of both suits proceeded separately there may be conflict of decisions. Hence, Ld. Advocate for defendants prayed that the present suit may kindly be stayed vide Section 10 of the Code of Civil Procedure. In support of the above said submissions, the Ld. Advocate for defendants placed reliance on *Jai Hind Iron Mart Vs. Tulsiram Bhagwandas 1952 C.J (Bom.) 72 and Mahangu*

**Prasad Sah Vs. Prayag Sah 1974 C.J.(Gau) 24.**

5. The Ld. Advocate for the plaintiff submitted that yet the trial of the suit is not commenced. Section 10 of the Code of Civil Procedure is applicable to the cases in which trial has already been commenced. Section 10 of the Code of Civil Procedure does not appear to govern applications for interlocutory reliefs. Such matters have been held not to be part of the concept of the trial contemplated by Section 10. Hence, he prayed for rejection of the application. In support of the above said submissions, he placed reliance on **Harish Motichand Sariya Vs. Ajanta Indian Ltd. And another 2003 (4) Mh.LJ 291**

6. I have gone through the record. It appears that the plaintiff has filed the present suit for declaration and perpetual injunction. The suit properties in the present suit are Gat Nos.114/1, 114/2, 114/3 and 114/4. The plaintiff sought declaration that the Sale Deed dated 30/11/2023 executed by defendant No.2 in favour of defendant No.1 is not binding upon him. He also sought perpetual injunction against defendant No.1 restraining him from causing obstruction to his joint possession over suit properties.

7. In the case of ***Jai Hind Iron Mart (supra)***, it is held that “*Section 10 of the Code of Civil Procedure does not contemplate an identity of issues between two suits, nor does it require that the matter in issue in the two suits should be entirely the same or identical. What the section requires is that the matter in issue in the two suits should be directly and substantially the same and proper effect must be given to the language used by the Legislature in section 10 that the identity require is a substantial identity*”.

8. In the case of **Mahangu Prasad Sah (supra)** it is held that “*same parties*” within the meaning of Section 10 of the Code of Civil Procedure contemplates same effective parties who seek reliefs or against whom reliefs are sought. If some persons are added as nominal or pro forma parties in subsequent suit that fact will not detract from the fact that the parties are essentially the same in both suits within the meaning of section 10 of the Code.

9. In the case of **Harish Motichand Sariya(supra)** it is held that “*the judgment of Supreme Court clearly concludes the issue. A Division Bench of this court in Senaji Kapurchand and others Vs. Pannaji Devichand reported in AIR 1922 Bom.276 took the view that even an order staying a suit under section 10 does not prevent a Court from making interlocutory orders, such as orders for a Receiver or an injunction or order for attachment before judgment and therefore I am of view that Court has jurisdiction to consider the application for temporary injunction and therefore will not refuse to exercise the jurisdiction vested in it by law*”.

10. On perusal of the record, it appears that in the present case, the trial has not been commenced. As per the observations in the case of **Harish Motichand Sariya (supra)** Section 10 of the Code of Civil Procedure does not prevent the Court from making interlocutory orders like temporary injunction, Receiver etc. Whether the matter in issue in the present suit is also directly and substantially in issue can be decided after entertaining the temporary injunction application. Before passing any order on temporary injunction application, the present application cannot be proceeded further. Hence, it would be just to keep the present application in abeyance till the decision of temporary injunction application. It would be just to consider the case laws relied upon by the Ld. Advocate for defendants at the time of

decision of the present application. Hence, I pass following order.

**- ORDER -**

1. The present application be kept in abeyance till the decision of temporary injunction application.
2. Both parties to take note of this order.

Date:18/12/2023

Sd/-  
**(D. M. G. Malidwale)**  
Civil Judge Junior Division,  
Radhanagari.