

MHLA050002302021



Order below Exhibit 17.

This is an application filed by the defendant No.2 under section 10 of Code of Civil Procedure for stay of the present suit.

2) The plaintiff has filed say to this application at Exhibit-17. The plaintiff has taken strong objection and prayed to reject the application.

3) Heard argument of both sides. It is contention and arguments of the defendant No.2 that R.C.S. No. 584/2019 is pending between the present plaintiff and present defendants in respect of the same property. Hence the present suit can not proceed further and needs to be stayed. It is contentoin and arguments of the plaintiff that R.C.S. No. 584/2019 is filed against defendant No.2 for the partition in the ancestral property. Present suit is filed for injunction against defendant No.1. Therefore the subject matter of both suit is different. Therefore the present application is not tenable and liable for rejection.

4) In support of the application, defendant No.2 has produced certified copy of plaint in R.C.S. No. 584/2019. From that plaint, it appears that present plaintiff Bhagirathabai Balaji Kature has filed the suit against present defendant No.2 and others including present defendant No.1, who is at serial No.6 in that suit. That suit is for partition, possession and injunction. Present suit is

7) **Section 10 of Code of Civil Procedure** reads that :

“ No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in (India) having jurisdiction to grant relief claimed, or in any court beyond the limits of (India) established or continued by (the Central Government) and having like jurisdiction, or before (The Supreme Court)”.

8) From the copy of plaint in R.C.S. No. 584/2019, it appears that, that suit is pending in the court of Civil Judge Junior Division at Ahmedpur. As defendant No.6 in that suit is Government Officer, that Court can not grant relief against him. That suit ought to have been transferred to the court of Civil Judge Senior Division. Therefore present suit is filed against defendant No.1, i.e. Government Officer to claim the relief of perpetual injunction against him. Therefore the present suit can not be stayed for the reason of competency of the court to pass the order. Hence the application is liable for rejection. In the result I pass the following order :

Order

The application is rejected.

Date :- 11/03/2022.

(P. A. Savadikar)
Civil Judge S. D. Ahmedpur
District Latur.