

**Dilip Kondaji Shinde v/s. Shantaram Ramkrushna Shinde**  
**Order below Exh. - 19 in R.C.S. No. - 6/2018**

1] The defendants have filed this application vide **Exh.- 19** under **Section 10 of the Code of Civil Procedure, 1906** to stay this suit. The plaintiffs filed their say on the same application and submitted that the plaintiffs filed this suit against the order of encroachment case, however the previous suit was filed to remove the encroachment. Therefore, the prayers are different and the said application of the defendants are rejected.

2] Considering the rival contentions of both the parties and documents produced in support of it, following points arise for my determination to which, I record my findings thereon for reasons to follow:

<b><u>POINTS.</u></b>		<b><u>FINDINGS.</u></b>
01]	Whether suit if required to be stayed to prevent multiplicity of proceeding with regard to the same subject matter and to avoid contradictory judgment being given by same court or any other court in India having jurisdiction to grant relief claimed in subsequent suit under Section 10 of the Code of Civil Procedure ?	<b>.... In the affirmative.</b>
02]	What order ?	...As per final order.

**: REASONS :**

3] Heard both sides.

**AS TO POINT NO. 1 -**

4] **Section 10 of the Code of Civil Procedure provides,**

**Stay of suit** :- 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 1[India] having jurisdiction to grant the 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].

***Explanation-*** The pendency of a suit in a foreign Court does not preclude the Courts in \*[India] from trying a suit founded on the same cause of action.

5] It appears that the plaintiffs have filed the present suit for declaration that the judgment and order in Encroachment case no. - 26/2016 and RTS revision No. - 30/2017 is not binding on the plaintiffs and the Tahasildar should not create a new way on the basis of that encroachment on the basis of abovesaid orders.

6] The present defendants also filed the certified copy of plaint in RCS No. - 69/2017 and the learned advocate for the plaintiffs submitted that the prayer are different and parties are different and cause of action are different, therefore, they prayed that application may be rejected.

7] If we perused the plaint of previous suit bearing RCS No. - 69/2017 it appears that plaintiffs Dilip and Sunandabai are also plaintiffs in the present suit bearing R.C.S. No. - 6/2018. The present defendants Shantaram and Subhash are also defendants in previous

suit. The present defendant Nandabai Prakash Mali though is not the defendant in previous instituted suit, however as per para no. 3 of plaint of RCS No. - 69/2017, it is stated that the Bhika Kondaji Shinde, her wife and sons sold the said land to Nandabai Prakash Mali. Thereafter, Nandabai sold some portion of the land to defendant nos. 3 and 4 Hanumant and Roshan. It means parties of both the suits are same or we can say that, the parties under whom they or any of them claimed litigating under same title.

8] In the previous instituted suit bearing RCS No. - 69/2017 it has been stated that the said Nandabai Prakash Mali has filed the Encroachment Case No. - 13/2016 and stated false allegation that there is an east-west way from northern side of suit land i.e. Gut No.- 1923. However, there is house and well of the plaintiffs i.e. Dilip and Kondaji. It is further stated that as plaintiffs are not ready to give the way to the defendants, therefore, they damaged the embankment between both fields and tried to encroached the said land. Therefore, they filed the suit for permanent injunction against the defendants. They also asked the injunction for their entire land of western side admeasuring 1H 70R area. It means there is a dispute of the way which is alleged from the northern side of Gut No. - 1923 and plaintiffs want injunction against defendants on the entire land including that disputed way.

9] The present suit is also filed for the declaration that the order in encroachment case No. - 26/2017 and RTS revision No. - 30/2017 are not binding on the plaintiffs. However, as per **Section 138(4) of the Maharashtra Land Revenue Court** the plaintiff is required to file the suit within one year to prove his title. In the present suit also plaintiffs are claiming their title by asking such

declaration on his entire land bearing Gut No. - 1923 bearing their area admeasuring 1H 70R. So in the both suits plaintiffs are required to prove their title. It means disputes in both suit are based on the so called disputed way connected in between Gut No. - 1929, 1932, 1933 and 1923 which further goes to Shindwal Dhondgawhan road from east-west. So matter in issue is directly and substantially the same between both the parties.

10] Plaintiffs further argued that defendants did not file any affidavit, did not file the certified copy therefore this application of the defendants is not maintainable. However, both the technical criteria could not override on the substantial justice. Moverover, the defendants filed the certified copy of Exh.- 1 of RCS No. - 69/2107, so this objection of the plaintiffs cannot be entertain.

11] So there is absolute bar to proceed this matter when previous suit is pending between the same parties. Therefore, this suit is required to be stayed. Hence, I answer point no. 1 in **affirmative**.

**AS TO POINT NO. 2 -**

12] To avoid the multiplicity of litigations and to avoid the contrary finding in both judgment it is necessary to stay the present suit. As discussed in point no. 1 to avoid the complication the present suit is required to be stayed till the decision of previous instituted suit i.e. R.C.S. No.- 69/2017. Accordingly, I pass the following order -

**ORDER**

1] Application vide Exh.- 19 hereby allowed.

- 2] Present suit bearing No. - RCS No. - 6/2018 is hereby stayed till final disposal of previous instituted suit i.e. R.C.S. No. - 69/2017.
- 3] This suit be entered on the "*sine-die*" list.
- 4] No order as to costs.

Date - 08/03/2018  
Place – Chandwad.

(K.G. Chaudhari)  
Civil Judge, Junior Division,  
Chandwad, Dist. Nashik.