

**Order below Exh. - 20 in R.C.S. No. - 106/2014**

1] The defendants filed this application vide **Exh.- 20** under **Section 10 of the Code of Civil Procedure, 1906** to stay this suit. The plaintiffs failed to file their say on the present application, however as plaintiffs were not leading any evidence since long, therefore the said suit is fixed for dismissal order and therefore, present defendants did not press the said application as the suit is fixed for dismissal order. Meanwhile, plaintiffs again asking time to lead evidence. Therefore, as per order Exh. - 24 the said application below Exh. - 20 will be reheard. Therefore, the said application vide Exh. - 20 is reheard. Heard learned advocates for both parties.

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 permanent injunction to restrain the defendants for interfering in their possession over the suit property admeasuring 3R of southern side of Gut No. - 455, situated at Bhatgaon, Tal. - Chandwad. It is further contended that, the defendant nos. 1 and 2 have filed the RCS No. - 44/2013 for declaration of ownership of defendant no. 2 of the said disputed 3R land on the basis of conditional sale-deed and for permanent injunction.

- 6] The present plaintiffs also filed the certified copy of plaint in RCS No. - 44/2013. 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. - 44/2013 it appears that the plaintiffs Jagannath and Sakhubai are the present defendants in RCS No. - 106/2014. Moreover, defendants no. 1 to 3 in RCS No. - 44/2013 are the plaintiffs in present suit. Defendant nos. 4 to 7 in RCS No. - 44/2013 are not the parties in the present suit, however they are the legal heirs of common ancestral Gopala Mahalu Mandale and Shewantabai Gopala and Pundlik Gopala. So parties under whom they are claiming on same title. It was the case of present defendants in RCS No. - 44/2013 that due to writing mistake in the conditional sale-deed the mutation entry has not been recorded. They also discussed the Gut No. - 460 i.e. previous survey no. 141 of village Bhatgaon, Tal. Chanwad. So the subject matter is directly and substantially in issue in previous instituted suit. The para no. 3 of the plaint bearing RCS No. - 106/2014 shows that the present defendants have filed false suit bearing No. - 44/2013. So basis cause of action is also same.

8] 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 -**

9] 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.- 44/2013. Accordingly, I pass the following order -

**ORDER**

- 1] Application vide Exh.- 20 hereby allowed.
- 2] Present suit bearing No. - RCS No. - 106/2014 is hereby stayed till final disposal of previous instituted suit i.e. R.C.S. No. - 44/2013.
- 3] This suit be entered on the “*sine-die*” list.
- 4] No order as to costs.

Date - 21/02/2018  
Place – Chandwad.

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