

Moh. Ansari Vs. Maroti Borade.**ORDER BELOW EXH. 39**

The present application has been filed by defendants under Section 10 of Code of Civil Procedure. It is submitted that, R.C.S. No.75/2012 is pending before this Court and the property and the parties in R.C.S. No. 75/2012 and present suit are one and the same. Therefore, the present suit being subsequent suit, is hit by the provisions of res-subjudice under Section 10 of Code of Civil Procedure. Hence, the defendants prayed that, the application be allowed and the present suit i.e. R.C.S. No. 105/2014 be stayed till final disposal of R.C.S. No.75/2012.

02. The application was strongly opposed by the plaintiff by filling his say at Exh.40. He submitted that, R.C.S. No.75/2012 is related with the suit properties No. 751 and 761. He also submitted that, in R.C.S. No.75/2012 there are five defendants. It is his contention that, R.C.S. No.105/2014 is related with the Western side of property No. 751 and there are seven defendants in that matter. The defendants namely Ajay Borade and Kerabai Borade are not defendants in R.C.S. No.75/2012. He also submitted that, the cause of action in both the suits are different and therefore the provisions of Section 10 of Code of Civil Procedure are not applicable. For the aforesaid reasons, he prayed that the present application be rejected.

03. Perused the application and say. Heard both sides. Before proceeding to decide the rival contentions, it is necessary to examine the provision of Section 10 of Code of Civil Procedure. It is provided in the aforesaid provision 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 party or between the 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 the relief claim or in any Court beyond the limits of India established or continued by 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 Court in India from trying a suit founded on the same cause of action.

04. From the bare reading of the above provision it reveals that, following ingredients are necessary to be proved for invoking Section 10 of Code of Civil Procedure.

1. Two Civil suits must be pending before competent Court.
2. The matter which is directly and substantially in issue in subsequent suit is also directly and substantially in issue in formal suit.
3. Both the suits must be between the same parties.

05. The key words in the provision are the matter in issue is directly and substantially in issue in the previously instituted the suit. In simple words the subject matter in both the suits must be identical. In the present matter, R.C.S. No.75/2012 is a previous suit in which the plaintiff has prayed for the relief of declaration and perpetual injunction in respect of property No.751 and 761. Whereas, in R.C.S. No. 105/2014 which is the subsequent suit the plaintiff has prayed for declaration and perpetual injunction in respect of Western side of property No.751. It must be noted that, for the application of Section 10

of Code of Civil Procedure the entire subject matter of the two suits must be same. This provision will not apply were few of the matters in issue are common and will apply only when the entire subject matter in controversy is the same. Applying this analogy it can be said that, the subject matter in R.C.S. No.75/2012 and R.C.S. No.105/2014 is not completely same. The property No.761 is not included by the plaintiff in R.C.S.NO.105/2014.

06. It must also be noted that, in R.C.S. No. 105/2014 the defendants Ajay Borade and Kerabai Borade are not the defendants in R.C.S. No. 75/2012. This means the parties in the both suit are also not identical. One more test to determine as to whether the provision of Section 10 of Code of Civil Procedure is applicable or not is to see whether the plaintiff can get the same relief in R.C.S. No. 105/2014 if R.C.S. No. 75/2012 is dismissed. It must be noted that, in R.C.S. No. 75/2012 and in R.C.S. No.105/2014, the cause of action and the relief claimed in respect of property and also the property number is different. Hence, certainly even if R.C.S. No. 75/2012 is dismissed on merit, the plaintiff would certainly be entitled to claim relief in subsequent suit i.e. R.C.S. No. 105/2014. This means as the subject matter, cause of action and the parties are different, the subsequent suit i.e. R.C.S. No. 105/2014 is not liable to be stayed under the provision of Section 10 of Code of Civil Procedure. Accordingly, I pass following order.

ORDER

Application at Exh.39 is hereby rejected.

Date : 23.12.2022

(**Mandar M. Raut**)
Civil Judge Junior Division,
Sailu Dist. Parbhani.