

ORDER BELOW EXH. 16 IN RCS NO. 71/2024

The defendants have filed the present application under Section 10 of Code of Civil Procedure (*hereinafter called as 'CPC' for the sake of brevity*) for staying the present suit.

02. It is the contention of the defendants that the plaintiffs have filed the present suit for perpetual injunction on the basis of the sale deed alleged to be executed on 25.06.2024. Before filing the present suit, the defendant no. 1 has filed the Spl.C.S.No. 111/2024 in April 2024 for partition, declaration and for injunction. The above suit is under *sub-judice*. In spite of these facts and the fact that there is constructed house over the Gat No. 1500, it was shown as open space and accordingly, a certain area has been purchased illegally by the plaintiffs out of the Gat No. 1500. The plaintiffs have no right to purchase such ancestral property before its partition. Therefore, such sale deed is not binding upon the defendants. The defendants are seeking the perpetual injunction with respect to Gat No. 1500 in Spl.C.S.No. 111/2024. Such relief is also prayed in the present suit. Therefore, the present suit is liable to be stayed under Section 10 of CPC. Hence, as the Spl.C.S.No. 111/2024 is already pending, the present suit may be stayed under the aforesaid provision.

03. The plaintiffs have filed their reply and objected to the application. It is the contention of the plaintiffs that the cause of action and reliefs in both the above suits are different. Therefore, question as to staying the present suit does not arise. The house property over the Gat No. 1500 was constructed by the plaintiff no. 1 and 2 out of their self earnings. Such property was purchased by the plaintiffs by a registered sale deed. In fact the defendants have no

right and interest with the Gat No. 1500. Only to harass the plaintiffs and their family, Spl. C. S.No. 111/2024 was filed by the defendants. The reliefs claimed in present suit and that of in Spl. C. S.No. 111/2024 are entirely different. The present suit is not barred by the provision under Section 10 of CPC. Therefore, the present application deserves to be rejected.

04. On the basis of the facts alleged, documents filed on record and submissions made by parties, following points arise for my determination to which I recorded my findings along with reasons thereto which are as under -

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1	Does defendants proves that present suit needs to be stayed under Section 10 of CPC ?	NO
2	What Order ?	Application is Rejected.

05. Perused the record. Heard the Ld. Advocates for both parties at length. They argued as per their respective contentions. Perused the documents produced by the parties on record.

06. The application is not supported with affidavit.

07. In support of contentions, the plaintiffs have relied on the principles laid down in following cited rulings.

(a) Sadguru Constructions Vs. Jaimeet Kaur Nirmansingh Sial reported in 2005 0 Supreme (Bom) 1811.

(b) Mujibur Rehman Haji Israr Alam Siddiqui Vs. Dr. Nazia Shad

Siddiqui and Ors. Decided on 8 July, 2024 in Appeal No. 127 of 2023.

POINT NO. 1 :-

08. Perused the record. It appears that the plaintiffs have filed the present suit for perpetual injunction with respect to plot No. 1/1 out of Gat No. 1500 situated at Kavathe Mahankal. The defendants are praying the relief for staying the present suit on the ground that previously, the defendant no. 1 has filed a Spl. C. S.No. 111/2024 and the same is pending before the Honourable Civil Judge Senior Division, Sangli for same subject matter and for same kind of relief. I carefully perused the plaint copy of Spl. C. S.No. 111/2024. It appears that the defendant no. 1 has filed such suit for partition, possession and for declaration against the defendants wherein the present plaintiffs appears to be defendant no. 1 to 3. There appears other defendants along with the present plaintiffs. Further, the subject matter in Spl. C. S.No. 111/2024 appears to be Gat No. 1114, 1115, 1116, 395, 707, 705, 808, 1548, 1555, 1556, 1557, 1558, 1500, 472, 1631, 201, 239 and 793. The suit property in present suit appears to be one of the suit property in Spl. C. S.No. 111/2024. In the present suit, the plaintiffs (i.e. defendant no. 1 to 3 in Spl. C. S. No. 111/2024) are seeking the relief of perpetual injunction. However, in Spl. C. S. No. 111/2024, the defendant no. 1 is seeking the relief of partition, possession and for declaration. The parties in both the suits appears to be different. The subject matter in both the above suits appears to be different and also the reliefs claimed by the respective parties therein. Further, the cause of action appears to be different in both the above suits.

09. The Honourable High Court of Bombay in ***Sadguru Constructions's Case (Supra)*** in para no. 19, it has been held that “*in the aforesaid judgment of the Supreme Court has held that one of the consideration is that there is no duplication of trial and that the rule is merely of a procedure. In the latest judgment of the Apex Court in the case of National Institute of Mental Health and neuro Sciences V. C. Parameshwara reported in (2005) 2 scc 256 the Supreme Court has held as under; “the fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical”.*

10. Again in ***Mujibur Rehman's Case (Supra)*** in para no. 22, it has been held that “*it will therefore be seen that the matter in issue in a subsequent suit must be directly and substantially in issue in the earlier suit. Emphasizing that the whole of the subject-matter has to be identical for an intervention under Section 10 of the CPC to be invoked, the Supreme Court ruled that the identity of the matter in issue would be vital.*”

11. Taking into consideration the above principles laid down in above cited rulings and the test contemplated in Section 10 of CPC, it can

be said that the matter in issue in the present suit is also not directly and substantially in issue in Spl. C. S. No. 111/2024 and not between the same parties. Both the above suits are filed for different kinds of reliefs. The subject matter and the parties as well as the cause of action is not identical in both the above suits. Therefore, the present suit cannot be stayed. Hence, taking into consideration, all the above facts and discussion, I hold that the defendants have failed to prove that the present suit needs to be stayed as per Section 10 of CPC. In result, I answer point no. 1 in negative.

POINT NO. 2 :-

12. in view of discussion as to point no. 1, I pass the following order.

ORDER

1. The application is hereby rejected.
2. Costs shall follow the event.

Date : 22/01/2025

(P. J. Ligade)
Jt. Civil Judge Junior Division,
Kavathe- Mahankal