

ORDER BELOW EXH.33
IN
R.C.S.No. 9 OF 2019
(IA NO.2/2019)
CNR NO.MHSO-06-0006522019

By this application the defendant Nos.5 and 10 have prayed for stay of suit in view of Section 10 of Code of Civil Procedure.

In brief the facts of the application are as follows:-

2. It is the contention of the defendant Nos.5 and 10 that R.C.S.No.544/2018 has been filed by Anita Kundalik Kumbhar against these defendants and subject matter of the present suit and the said suit is same. Similar nature of relief have been claimed in both the suit. With these contentions, these defendants have prayed to stay this suit as it is subsequent suit.

3. The application is opposed by the plaintiff by reply filed below it contending that, the parties and the subject matter are not same and the application is liable to be rejected.

4. Heard the learned Advocates for the parties. Read the application and reply filed. The present suit has been filed by Kundalik Kumbhar and Anita Kundalik Kumbhar in respect of their property block No.707/2/B/1. The 7/12 extract of this property shows that, the plaintiff No.1 Kundalik has share 1 H. 20 R and plaintiff No.2 0H 23 R. The present applicants are defendant No.5 and 10 in this suit. The copy of plaint of R.C.S.No.544/2018 filed before the Civil Judge Junior Division, Pandharpur is produced at Exh.39/2. It shows that, the plaintiff No.2 Anita has filed said suit against defendant Nos.5 and 10. The defendant Nos.1 to 4 and 6 to 9, 11 & 12 are not parties in said R.C.S.No.544/2018. In the said suit, the plaintiff Anita has prayed that, the defendant No.5 and 10 shall not create new road from the suit property block No.707/2/B/1. It is her contention in the said suit that, the defendant No.5

and 10 are creating new road by taking disadvantage of order of Tehsildar. Tehsildar or any Government authority is not party to the said suit. In the present suit, Anita along with Kundalik have prayed that, the order of Tehsildar is illegal and not binding upon them. Therefore, the subject matter of the present suit is order of Tehsildar, whereas the subject matter in R.C.S.No.544/2018 is the act of defendant Nos.5 and 10 creating new road. Moreover, this suit is against Government authorities whereas R.C.S. No.544/2018 is only against defendant Nos.5 and 10. Therefore, parties to both suit are not same. The subject matter is also not same. The plaintiff has relied upon the judgment in **Jayprakash Sitaram Goel Vs. Smt.Sarubai Narayan Mulik and others (AIR 2018 (NOC) 707 Bom.)**, in which it is held that, where the parties to both suits are not same and issue directly and substantially for consideration in earlier suit and subsequent suit also not same relief claimed in earlier suit was in respect of entire land whereas relief claimed in subsequent suit was in respect of part of land and therefore, subsequent suit cannot be stayed.

5. In case before me as aforesaid subject matter and relief in both suits are not same. Parties are also not same. Therefore, in view of aforesaid judgment this suit cannot be stayed because of pendency of R.C.S.No.544/2018.

6. Considering aforesaid findings I am of the view that the present suit cannot be stayed by applying provision of Section 10 of the Code of Civil Procedure. Hence, I pass following order;

ORDER

1. Application Exh.33 is rejected.
2. Costs shall follow the event.

Sd/-

Pandharpur
Date:- 02.03.2019

(R.A.Sasne)
Civil Judge Senior Division,
Pandharpur

CERTIFICATE

I affirm that, the contents of the this P.D.F file Order/Judgment are same word to word, as per the original order/ judgment

Name of Stenographer : Kondekar B.R.
Court Name : Civil Court Senior Division, Pandharpur
Date 02-03-2019

Order/Judgment signed
by the Presiding Officer on : 02-03-2019

Order uploaded on : 02-03-2019