

ORDER BELOW EXH.34
IN
R.C.S.No. 9 OF 2019
(IA NO.3/2019)
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.91/2018 has been filed by Uttam Bhanudas More 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. Heard the learned Advocates for the parties. Read the application and reply filed.

4. The present suit is filed by Kundalik and Anita. The copy of R.C.S.No.91/2018 filed at Exh.39/1 shows that, it is filed by Uttam More and Avinda More. Present suit is in respect of block No.707/2/B/1. Whereas, R.C.S.No.91/2018 is in respect of 270/3/B and 268/2. Therefore, parties to both suits are not similar. Properties which are subject matter of the suit are not similar. The order of Tehsildar has been passed in respect of road alleged to be affecting the properties of the plaintiff's in R.C.S.No.91/2018 and R.C.S.No.9/2019. Independent land owners have filed independent suits and therefore, it cannot be considered that both these suits are against same parties

for same relief and in respect of same property. Therefore, I am of the view that, the contentions mentioned in Section 10 of the Code of Civil Procedure are not satisfied.

5. 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 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.

6. 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.91/2018.

7. 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.34 is rejected.
2. Costs shall follow the event.

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