

ORDER BELOW EXH. 01
(Passed on : 03/01/2024)

Perused the record. This court has passed order below Exh. 01 on 27.11.2023 and directed both the parties to argue on stay of suit vide Section 10 of the Civil Procedure Code, 1908 (hereinafter "C.P.C." for short.). However, till today both the parties failed to argue on the same. Hence, I proceeded without hearing arguments on behalf of both the parties.

2] Record shows that, the plaintiff has filed this suit for the relief of simplicitor injunction. The suit property is described as block no. 770/3 situated at village Ropale, Tah. Pandharpur. The plaintiff has contended through the plaint that, the predecessor of the plaintiff and the plaintiff are in possession of the suit property since the sale deed dated 04/07/2013. Still, defendant no.1 and 2 have instituted RCS No. 301/2014 against the plaintiff and his father, for declaration and injunction. In that suit, defendants filed an application for appointment of the court commissioner, which has been allowed by the court. Accordingly, on 26/08/2015, measurements were done by M.R.No.735/2015. Said measurements were not conducted as per the written partition deed dated 30/12/1979. Defendant no.1 deposed in RCS No. 575/2014 about the partition dated 30/12/1979. The plaintiff has not committed any encroachment. Still on the basis of M.R.No. 735/2015, defendants effected the amendment in RCS No. 301/2014 and claimed for the recovery of possession of the area 0.13 R from the plaintiff.

3] The plaintiff further submitted that, the suit bearing RCS No. 301/2014 is still pending in the court and no such finding is given whether the plaintiff has committed encroachment. Still, defendants are

threatening the plaintiff and are in attempt to recover the possession illegally. On 26/01/2017, defendants obstructed the bandh existing between the suit property block no. 770/3 and of block no. 770/2. Hence, with this cause of action, the plaintiff has instituted this suit, for restraining defendants from causing obstruction to his possession over the suit property.

4] Moreover, certified copy of the plaint in R.C.S. no. 301/2014 filed by the plaintiff at list Exh. 04/3 shows that, defendants have filed suit for block no. 770/2 with southern boundary as block no. 770/3 i.e. the suit property in this suit. The amendment in respect of recovery of encroached portion was carried out on 08.11.2016 by order of joint C.J.J.D. The plaintiff mentioned the cause of action for filing this suit as threatening by defendants to recover the possession on the basis of encroachment show in the plaint of R.C.S. no. 301/2014. However, till today R.C.S. no. 301/2014 is not finally decided on merits.

5] As such, the plaintiff can raise his claim in R.C. no. 301/2014 for restraining defendants from causing obstruction to his possession still he filed a separate suit. Hence, it appears that, the matter in issue involved in this suit is also directly and substantially in issue in R.C.S. no. 301/2014 between the parties of this suit also. Furthermore, in the perspective of mandate of sec. 10 of the CPC, the Court in which the previous suit is instituted must have the jurisdiction to grant the relief claimed in the subsequent suit. Definitely, the Court trying the suit bearing no. 301/2014, has the wise and ample jurisdiction to decide this suit also. In accordance with these reasons, it reveals that, res-sub judice principle is applicable in the present case.

6] Unless and until R.C.S. no. 301/2014 attains finality on merits or unless and until it has been decided as to whether plaintiff has committed any encroachment in the suit property in R.C.S.no. 301/2014, it would not be proper to grant any relief to the plaintiff in this suit as he himself based his cause of action with R.C.S. no. 301/2014. The plaintiff had very well opportunity to protect his possession through R.C.S. no. 301/2014. In such circumstance, keeping in mind, the established purpose of sec. 10, that to avoid two conflicting decisions, a court in an appropriate case can pass an order of consolidation of both the suits. Besides, this, it only bars the trial of the suit and not take away the power of the Court from passing interim orders. For the above-mentioned reasons, the instantaneous suit has to stayed with the perspective of rule of procedure. Resultantly, following is the order –

ORDER

1. The trial in suit bearing RCS No. 118/2017 is stayed till the decision in RCS No. 301/2014.
2. Parties to take note.

Place – Pandharpur

Date – 03/01/2024.

SD/-
(Sonal A. Salunkhe)
Jt. Civil Judge, J.D. Pandharpur
(Court No.05)

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer :- M.P.Gheradi (L. G.)

Court :- Jt.C.J.J.D. & J.M.F.C.
Pandharpur

Date :- 03.01.2024

Judgment/Order signed by :- 03.01.2024
the Presiding Officer

Judgment/Order uploaded on :- 06.01.2024