

**ORDER BELOW EXH. NO. 14 IN R.C.S. NO. 140/2016**

**(Ganesh Patil Vs. Mahadev Patil)**

**(Passed on : 01/03/2021)**

1. Present application is filed by defendant u/s. 10 of Code of Civil Procedure 1908 (hereinafter C.P.C for short).
2. It is contended by the defendant that, the present suit for recovery of possession of City Survey no. 776/D/1 filed by the plaintiff against the defendant. However, defendant had filed special Civil Suit no. 40/2013 against the present plaintiff for declaration of sale deed as null and void regarding the suit property. Suit was accordingly decided and dismissed on 14/10/2015. The appeal against the decision in Special suit no. 40/2013 is filed in Hon'ble District court bearing Civil Appeal no. 189/2015 and same is pending till date. On the decision of said appeal, rights of the parties are depends on. Therefore, defendant has filed present application for stay of suit as it is not proper to proceed the present suit.
3. Plaintiff has filed his say at Exh. no. 19 and opposed the application of defendant on the grounds that, the application filed by defendant is not come within the purview of section 10 of Code of Civil Procedure 1908. He further stated that, Special Civil Suit no. 40/2013 was filed by defendant against the original owner namely Haribhau Patil for being the adopted son of him, he has one half share in the property. Said suit was decided on merit and accordingly dismissed by the court. The original owner before his death had executed sale deed dated 21/10/2011 in favour of plaintiff and the said property was self acquired property of deceased Haribhau. Accordingly name of the plaintiff is registered in city survey register. Defendant was living with deceased Haribhau for temporary period and wanted to grab all property belonged to Haribhau. Therefore, he has filed Special Civil Suit no. 40/2013 against the

plaintiff. The subject matter in both the suit are different. An appeal regarding Civil Appeal no. 189/2015 is pending in the District court but it will not affect the present suit. Hence, he prayed for rejection of the application.

4. Perused the record, application and say. Both the Ld. advocates for plaintiff and defendants are absent. Hence, present application proceeded without argument of both the parties. Present application is filed by plaintiff stay u/s. 10 of the Code of Civil Procedure 1908. Therefore, it is pertinent to note that, the scope and object of section 10 of C.P.C. For that purpose I have reproduced the Section 10 of C.P.C. as follows :

*“ No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in previously instituted suit between the same parties, or between the parties under whom they or any of them claim litigating under the same title where such a suit is pending in the same or any other court in India having jurisdiction to grant the relief or in any court beyond the limits of India establish or continued by the Central Government or having like jurisdiction, or before the Supreme court.”*

5. It is clear from the above provision the suit has to be pending between the same parties regarding same cause of action. In present suit defendant has not produced the copy of the plaint in Special Civil Suit no. 40/2013 and copy of appeal in Civil Appeal no. 189/2015. Further, to invoke the section 10 of C.P.C. there shall be suit pending in other court having competent jurisdiction to try the suit. This is not the case of the defendant in present application. Moreover, it is contended that, the appeal regarding the suit is pending in the District court. The language of Section 10 does not reveals the pending appeals but only pending suit. Therefore, *prima facie* the application is not fall under the purview of section 10 of C.P.C. Therefore, there is no purpose to

stay the present suit as subject matter between both the suits are appears to be different. Considering these circumstances, I pass following order:

**ORDER**

1. Application at Exh. No. 14 is hereby rejected.
2. No order as to costs.

**(Dictated and pronounced in open court.)**

Date: 01/03/2021  
Place: Pandharpur.

(Smt. R. G. Kumbhar)  
5<sup>th</sup> Jt. C.J.J.D. & J.M.F.C.,  
Pandharpur

**CERTIFICATE**

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

Name of the Stenographer : M. P. Gheradi, Steno L.G.

Court Name :5<sup>th</sup>Jt.C.J.J.D. & J.M.F.C., Pandharpur.

judgment signed by the P.O.on :01/03/2021

judgment uploaded on :02/03/2021