

MHSO110048242017



ORDER BELOW EXH. 25

1. This is an application filed by defendant no. 4 under section 10 of the Code of Civil Procedure to stay the suit. Defendant no. 4 contended that plaintiff has filed present suit for declaration, partition and permanent injunction. RCS No. 853/2014 for declaration, permanent injunction and in alternative for partition has been filed in this court in respect of Gat No. 97/2 i.e. the suit property in the present suit. Said suit is pending. In that suit present defendant nos. 1 and 2 are also made defendant nos. 1 and 2 and they appeared and filed their say in that suit. In RCS No. 853/2014 and in the present suit, suit property is one and the same and in both suits relief of partition is asked for. Therefore, in both suits properties, parties and suits are one and the same. Hence, unless and until the RCS No. 853/2014 is finally decided court cannot proceed with the trial of the present suit. Hence, defendant no. 4 filed this application to stay the hearing of the present suit.

2. Plaintiff by filing say at Exh. 32 resisted the application of defendant no. 4. Plaintiff contended that defendant no. 4 is not a party in RCS No. 853/2014 and for this reason he has no right to file present application. It is further contended that defendant no. 4 has no right to ask for relief in respect of suit property. It is also contended that in RCS No. 853/2014 the relief of partition is an alternative relief and there is no direct relief asked for in respect of suit property. Therefore for these reasons plaintiff prayed for

rejection of the application.

3. Heard Learned Advocates for plaintiff and defendant no. 4.

4. Perused the documents on record. Following points arise for my determination my findings there on along with reasons are as under:-

SR.NO.	POINTS	FINDINGS
1	Whether present suit is liable to be stayed under section 10 of the CPC ?	In the negative.
2	What order?	Application is rejected with costs.

REASONS

POINT NO. 1

5. While deciding the application under section 10 of the CPC court must see that issue between present suit and previously instituted suit is the same between the same parties or between parties under whom they or any of them claim litigating under same title. Present application is strongly opposed by the plaintiff. Further in order to see whether the issue involved in the present suit and in RCS No. 853/2014 is one and the same, whether relief claimed in both suits is the same or not, whether parties in both suits are same or not, there nothing on record except the application and bare words of the defendant no. 4. It was the duty of the defendant no. 4 to produce the copy of RCS No. 853/2014 to show that the issue involved in the present suit and the previously instituted suit is one and same. Defendant no. 4 has not produced the copy of RCS No.

853/2014 on record. Therefore, there is nothing on record from which this court can come to the conclusion that the issue involved, the relief claimed and the parties litigating in present suit and in RCS No. 853/2014 are the same. Without there being any document, this court is unable to decide the present application when the application is strongly opposed by the plaintiff. Therefore, without there being any evidence there is absolutely no reason to stay the proceedings of the present suit. Ultimately present application is liable to be rejected. Accordingly, I answer to point no. 1 in the negative and in answer to point no. 2 I proceed to pass the following order.

ORDER

Application is rejected with costs.

Malshiras.
Date: 06/08/2019

(J.M.Agnihotri)
3rd C.J.J.D. & J.M.F.C., Malshiras.

Certificate

I affirm that, the contents of this PDF file – Judgment/order is same word to word as per the original judgment/order.		
a) Name of the Stenographer	:	Shri. S. S. Patne
b) Name of the Court	:	Judicial Magistrate F. C., Malshiras
c) Judgment signed by P. O. on	:	06.08.2019
d) Judgment uploaded on	:	08.08.2019