


MHSO200001852026 	<u>R.C.S. NO. 39/2026</u>
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ORDER BELOW EXH. NO. 30

The present application has been preferred by the defendant Nos. 1 to 3, 5 & 6 by invoking the provisions of Section 10 of the Code of Civil Procedure, 1908 and thereby sought stay of the present suit on the ground that a previously instituted suit between the same parties and the same subject matter in issue is pending in competent court. This order was passed during summer vacation in view of the joint pursis filed by both parties below Exh. 47.

2. The Ld. Advocate representing the above mentioned defendants submitted that, present suit of is not maintainable in its present form. Plaintiff has filed earlier R.C.S. No. 470/2024 about the suit properties mentioned in the suit. Said suit is pending. Plaintiff by filing application below Exh. 115 dated 13/01/2026 in RCS No. 470/2024 prayed for injunction against defendant Nos. 6 & 7. Upon which notice was issued to the concerned defendants. Despite that, the plaintiff has filed present suit suppressing these materiel facts. Since plaintiff filed present suit by arraying same suit property, same parties and same relief hence the plaintiff's suit in not tenable. The present suit is barred by sec 10 of code of civil procedure. The parties, suit properties and relief prayed involved in the present suit are identical to those in the previously instituted suit and therefore continuation of the present

proceedings would result in multiplicity of litigation and conflicting findings. Accordingly it has been prayed on behalf of the defendant that the proceeding of the suit and interim applications be stayed vide section 10 of C.P.C.

3. Per contra, the learned counsel for the plaintiff opposed the application by filing his say below Exh. 32 and contended that, plaintiff filed RCS No. 470/2024 and prayed for declaration against the compromise decree in RCS No. 392/2020 and partition arraying 11 properties against defendant Nos. 1 to 79. Further he contended that, plaintiff by filing application below Exh. 131 relinquished the claim of declaration. Hence, RCS No. 470/2024 is prosecuted only with the claim of partition. However, plaintiff filed present suit against defendant Nos. 1 to 6 for perpetual injunction. Defendant Nos. 1 to 5 are the predecessors of defendant No. 6 hence they are impleaded as formal parties. The properties, the parties and the reliefs claimed in both these suits are distinct. The cause of action in both the suits are different. So, it is prayed that the application may be rejected.

4. Heard Ld. Adv. Shri. Rodage for defendants and Adv. Dhere for the plaintiffs. Ld. Adv. Shri. Rodage submitted that there should not be controversial decisions as the parties in both the suits are one and the same alongwith the properties. So, he submitted that the application may be allowed whereas Adv. Dhere submitted that the reliefs claimed, property included and parties are completely different. Further, the defendant has not filed written statement in either of the suits hence the scope of controversy is not crystallized. It is further submitted that the ingredients of Section 10 CPC are not satisfied.

5. Following points arose for my determination and I am reproducing the same as under :-

Sr. No.	Points	Findings
1.	Whether the defendants proves that the matter in issue in the present suit was directly and substantially in issue in R.C.S. 470/2024 ?	In the negative.
2.	Whether the defendants proves that R.C.S. 470/2024 was conducted between the same parties or parties under whom they or any of them claim litigating under the same title ?	In the negative.
3.	Is it necessary to stay the suit ?	In the negative.
4.	What order ?	The application is rejected.

AS TO POINT NOS. 1 TO 4 :-

6. The defendants relied upon following documents,

1. Copy of Exh. No. 1 in RCS No. 470/2024
2. Copy of Exh. No. 5 in RCS No. 470/2024
3. Copy of Exh. No. 105 in RCS No. 470/2024
4. Copy of Exh. No. 115 in RCS No. 470/2024
5. Copy of Exh. No. 127 in RCS No. 470/2024
6. Copy of Exh. No. 130 in RCS No. 470/2024

7. The Ld. Advocate for defendants argued that, the present suit is not maintainable in its current form. RCS No. 470/2024 is pending in competent Court concerning the exact same suit property, same parties with same relief. He pointed out that, plaintiff had preferred an application below Exh. 115 on 13/01/2026 in the earlier suit and claimed the relief of interim injunction against defendant Nos. 6 and

7. Accordingly notices were duly issued. Plaintiff filed present suit by suppressing material facts. Since the parties property and the relief claim is same this suit is barred by Section 10 of C.P.C. In support of his contention he relied upon the following authorities,

1. *Shivani Properties Pvt. Ltd. Versus Legal Remembrancer* reported in AIR, 2022 CAL, 429.
2. *Gregorio Pereira (deceased) through L.Rs. and Anr. Versus Damazio Bento Pereira and Ors.* reported in 2004 (3) ALL MR 520.

8. Based upon the above authorities, the Ld. Advocate for the defendants argued that, in present suit the matter in issue is directly and substantially identical to the matter in issue in the earlier instituted suit. And where there is a identity of property and parties then Section 10 is mandatory to prevent conflicting findings. The words directly and substantially are used in contradiction to the words incidentally or collaterally in issues. He further argued that, the present suit is for identical property, party and relief. Hence, stay must be granted U/Sec. 10 of C.P.C.

9. Ld. Advocate for plaintiff had relied upon following judgments,

1. *Indian Bank Versus Maharashtra State Co-Operative Marketing Federation Ltd.*, reported in 1998, AIR, SC 1952.
2. *Shri Harish Motichand Sariya Versus Ajantha India Ltd.*, reported in 2003 (4) Mh.L.J., 291.
3. *Paruchuri Siva Ramprasad Rao Versus Bala Tripura Sundari Rao*, reported in 2011 (6) ALD, 122.

10. Based upon the above authorities, the Ld. Advocate for the plaintiff argued that, Sec. 10 of C.P.C. does not bar institution of the subsequent suit. Further it does not affect preliminary proceeding rather its strictly bars the commencement of the trial. The defendant has not filed its written-statement neither in present suit nor in the earlier suit. Hence the trial has not been legally commenced making this stay application premature.

11. Heard. Perused the record. Present suit is filed by the plaintiff against defendant Nos. 1 to 6 for the relief of perpetual injunction. Upon perusal of the copy of Exh. 01 placed on record by defendant along with Exh. 29 of R.C.S. No. 470/2024, it reveals that, plaintiff instituted that suit for partition and separate possession against 79 defendants. Furthermore, there appears to be around 11 properties arrayed in that suit, while in present suit the relief is asked only with respect to block No. 183 as mentioned in suit para No. 1(B) and 1(C). Furthermore, during arguments Ld. Advocate for plaintiff contended that, defendants have neither filed written-statement in present suit nor in the earlier suit. Upon which it is admitted by the Ld. Advocate representing the defendants during the arguments that, since other applications are pending in the former suit, they have not filed written-statement in earlier suit as well.

12. Section 10 of the Civil Procedure Code, 1908 speaks about stay of suits. 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 parties under whom they or any of them claim litigating under the same title where such suit

is pending in the same or any other Court in India having jurisdiction to grant the relief claimed or any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court. So, the mandate of Section 10 is that there should be two suits. The matter in the present suit must be a matter directly and substantially in issue in the earlier instituted suit between the same parties.

13. Thus, Section 10 prohibits the Court from proceeding with the trial of suit in which the matter in issue is also directly or substantially in issue in previously instituted suit provided other conditions of Section 10 are satisfied. The provision is in the nature of rule of procedure that prohibits the Court from proceeding with the trial of any suit but it does not affect the jurisdiction of the Court to entertain and deal with later suit nor does it create any substantive rights in the matter. Further it should be pertinent to note that, in order to attract the bar of Res-subjudice U/Sec. 10 of C.P.C. mere identity of some property or overlapping parties is insufficient.

14. Section 10 prohibits the Court from proceeding with the trial of suit in which the matter in issue is also directly or substantially in issue in previously instituted suit provided other conditions of Section 10 are satisfied. In such situation, it is to be noted that, A trial in an regular suit ordinarily begins only after the filing of rival pleadings upon which issues are framed by the Court. Admittedly the defendant has not filed written-statement in either of the two suits. Since the written-statement have not been filed, pleadings are incomplete and issues have not been crystallized. In such situation it is not possible for the Court to

completely determine whether the matter in issue is directly or substantially identical to that in the previously instituted suit. In such scenario, allowing this application at this stage would amount to stalling the proceeding without there being sufficient material to establish identity of issues. It is to be noted that, the burden lies on the applicant to demonstrate that the conditions of Section 10 of C.P.C. are strictly satisfied. Mere assertion is not sufficient. Unless pleadings of both parties are complete, the Court cannot undertake a meaningful comparison of the issues involved in both the suit. So far as the citations relied by the defendants are concerned, it is to be noted that, considering the factual matrix in those cases, the suits had progressed to a stage where the pleadings were complete. Thus, the Court was able to actively compare the rival pleadings between the parties so as to determine the identical nature of the dispute. In present case, the defendants have not even filed written-statement neither in the former suit nor in the present suit. Hence, the pleadings on the part of the defendants are not complete so as to satisfy the requirement U/Sec. 10 of the C.P.C. Thus, the factual matrix in the above cited cases is different from the present suit. Hence, in my humble opinion, the citation referred above by the defendants will not support the case of the defendants. In the light of above discussion the defendants failed to establish that matter in issue in the present suit is directly or substantially in issue in previously instituted suit. Hence this application deserves to be rejected. Hence the following order,

ORDER

1. The application is rejected.
2. Cost in main cause.

Date : 28/05/2026.

(S. S. Salunkhe)
2nd Jt. Civil Judge, J. D., Sangola.

CERTIFICATE

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

Name of Stenographer : V. A. Dange
Court : 2nd Jt. Civil Judge J. D., Sangola
Date : 28/05/2026
Order signed by the P. O. : 28/05/2026
Order Uploaded on : 28/05/2026