

Order Below Exh. 22 R.C.S. No. 98/2021

This is an application filed by defendants under section 10 of Code of Civil Procedure for stay of suit.

2. It is contention of defendants that, defendant no. 1 has filed suit bearing R.C.S. No. 137/2021 before Hon'ble Civil Judge Senior Division, Satara. In the said suit decision of Tahasildar given in R.C. no. 4/2014 dated 11/08/2014 is challenged. Defendant no 1 has claimed that the decision given by Tahasildar in R.C. No. 4/2014 is not binding on him. The present suit is also based on the decision of R.C. no. 4/2014. The subject matter of R.C.S. no. 137/2021 and this suit is same. Therefore to avoid the conflicting decisions it is necessary to stay the present suit till decision of R.C.S. No. 137/2021. Hence, lastly defendants prayed to stay this suit as per section 10 of the Code of Civil procedure.

3. The plaintiff resisted the application by filing the say and contended that, only to prolong the matter this application has been filed. The requirement of section 10 are not complied. Hence this suit can not be stayed. Hence, the plaintiff prayed to reject the application.

4. Perused the application and say filed by plaintiff. Gone through document filed on record. Heard both parties at length.

5. The instant suit is filed by plaintiff for perpetual injunction claiming obstruction at the hands of defendants over her

right to way existed in gat no. 1037/11/B and 1036/2. On the contrary the defendants have claimed that the decision given by Tahasildar in R.C. No. 4/2014 is challenged before Hon'ble Civil Judge Senior Division, Satara in R.C.S. No. 137/2021. On perusal of copy of R.C.S No. 137/2021 it appears that, defendant no. 1 has filed suit for declaration that the decision given by Tahasildar in R.C. No. 4/2014 is not binding on him and perpetual injunction that from gat no. 1037/11/B road can not be created. On perusal of plaint in R.C.S. No. 137/2021 it appears that, present plaintiff is not a party to R.C.S. No. 137/2021.

6. Section 10 of CPC envisages that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under the 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.

7. One of requirement of section 10 is that, in earlier instituted suit and in the present suit the parties must be the same. However, instant case the parties are not same and litigating under the same title. The plaintiff is not party to R.C.S. No. 137/2021. Hence, it appears that, the requirement of section 10 of Code of Civil procedure is not complied.

8. Further it appears that, both the suit are not identical.

The present suit is only filed claiming perpetual injunction. The matter in issue in this suit is not directly and substantially in issue in R.C.S. No. 137/2021. Therefore, the present suit cannot be stayed till decision of R.C.S. No. 137/2021. Hence, this application deserves to be rejected. Hence, following order.

Order

Application is rejected.

Koregaon
Dt- 02/08/2021

(A. B. Patil)
Jt. Civil Judge Junior Division,
Koregaon.