


MHTH170015252015 	<u>REGULAR CIVIL SUIT NO.171/2015</u> Chandrakant Baburao Patil and anr. vs. Asif Iqbal Dhanani & ors.
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ORDER BELOW EXH.269

By way of this application, filed under section 10 read with section 151 of the Code of Civil Procedure, defendant has prayed to stay this suit, till decision of, R.C.S. No.192/2014 and R.C.S. No.83/2013.

Facts of application in short arise as under;

2] Plaintiffs have filed this suit for perpetual injunction against the defendants in respect of land from survey no.827, hissa no.5. In this suit, defendants have filed counter claim to declare that plaintiffs have no right to claim road from suit property B i.e. survey no.827/4 and further prayed to restrain the plaintiffs from causing obstruction to the defendants/counter claimant from using the road passing from survey no.827/8. Original suit is against Asif Dhanani and his family members.

3] Now, it is the contention of defendants that property involved in R.C.S. No.192/2014 and 83/2013 is the same and same issues are also involved in those suits, as involved in present suit. It is further stated that, if judgment passed in R.C.S. No.192/2014 and R.C.S. No.83/2013, there are chances of affecting ownership rights of plaintiffs. Therefore, they prayed to stay this suit.

4] Learned advocate for plaintiffs filed his say at Exh.271 and opposed to allow this application stating that, reliefs claimed in both suits are different. Parties in both suits are also different and prayer clause from

counter claim is also not similar to other suits. Hence, prayed for dismissal application with costs.

5] Heard, learned advocate both parties and gone through record. For ready reference, section 10 of C.P.C., quoted below, which reads as under;

10. Stay of suit.— 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 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] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] and having like jurisdiction, or before [the Supreme Court].

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in 1[India] from trying a suit founded on the same cause of action.

6] Section 10 of the C.P.C., is based on principle that two courts should not try the same matter between the same parties simultaneously. So that, to avoid conflicting judgments and multiplicity of proceedings. To attract section 10 of C.P.C., essential conditions are that there must be two suits, one previously instituted and another subsequently. Matter in issue, must be directly and substantially the same in both suits. Parties must be same or claiming under same parties.

7] Defendant has produced on record copy of the R.C.S. No.83/2013, that suit has been filed by Darshna Thakur against plaintiff no.2 in this case alongwith some other persons. That suit is for partition and separate possession.

8] So far as R.C.S. No.192/2014 is concerned, it is filed by Mahendra Patil against both plaintiffs alongwith some other persons in that suit and that suit is also for partition and separate possession.

9] Thus, relief claimed in both suits are different. Parties to both suit are also different. Earlier two suits are between family members for partition, while present suit is against the third parties for injunction. Therefore, in any case it cannot be said that principle stated in section 10 of the C.P.C. will be attracted in this case. There is no question of contradictory judgments by Court of concurrent jurisdiction. In such circumstances, I am of the view that this is not fit case to stay the proceeding under section 10 of the C.P.C. Application deserves to be rejected. In result, I pass following order.

ORDER

Application is rejected.

Date : 13.03.2026
Palghar

(K. G. Sawant)
Civil Judge Senior Division,
Palghar.