

ORDER BELOW EXH.45 IN L.A.C.NO.103/2020

(CNR No. MHWS02000524-2020)

S.D.O. & L.A.O. Washim ..Vrs.. Durgabai & Ors.

This is an application filed by respondent No.2 as per section 10 r/w section 151 of the Civil Procedure Code (for short C.P.C.) to stay this suit.

2. It is contention of respondent No.2 that, he has filed civil suit bearing No.22/2018 for partition, separate possession and permanent injunction against Nivrutti Parashram Gawande, Smt. Durgabai Nivrutti Gawande and others. The said suit has been filed for partition, separate possession in respect of Gat No.124,14,23,44,47 of village Saykheda Tq. & Dist. Washim. The Land from Gat No.44 was acquired by the National Highway Authority of India through applicant in the suit for widening of National Highway No.161. Respondent No.2 had filed objection that before the applicant in this suit. As per the said objection and provisions of section 3H of National Highways Act the compensation amount of the acquired land of Rs.1,83,08,810/-, has been deposited by the applicant in court. Respondent No.2 along with her son Mr. Amit Suresh Gawande, Ashish Suresh Gawande and Mrs. Ashwini Dipak Thakare have vested interest in the suit property Gat No.44 described in R.C.S. No.22/2018 as it is their ancestral property. Already issues have been framed in R.C.S.No.22/2018. The issue involved in this suit is directly and substantially involved in the previous suit bearing R.C.S. No.22/2018. In both the suits parties and issues involved in are same. Respondent No.2 has lastly prayed to stay this suit.

3. On the other hand respondent No.1,3 and 6 have filed their say on the overleaf of the application and has strongly opposed the application, contending that, the issues in R.C.S. No.22/2018 and this suit are not same. He has also denied that, non-applicant No.1,3 to 6 have denied the share of respondent No.2 in the partition suit. Respondent No.2 has only claimed partition in R.C.S. No.22/2018 in respect of suit property situated at village Saykheda. She has not claimed partition in the property situated at Washim and village Kakaddati, therefore suit for partial partition is not tenable. Therefore, Exh.5 application in R.C.S. No.22/2018 has been rejected. In R.C.S. No.22/2018 suit property of village Saykheda Gat No.124,14,23,44,47 are involved in it. Out of it only land from Gat No.44 has been acquired. Non-applicant No.1,3 to 6 have admitted applicants share in the suit property, as per applications filed by them at Exh.15,25,26,27,28,39,40,41,42. The issue in respect of acquired land of Gat No.44 has been solved. Respondent No.2 is well settled therefore she does not require the compensation amount and therefore is prolonging this matter. He contended that, Non-applicant No.1 is 80 years old and is suffering from heart disease and requires the compensation amount for medical treatment. The applicant by pleading the contents of R.C.S. No.22/2018 is misleading this court. They have prayed to reject the application.

4. Heard Advocate Shri. G. V. Biyani for the respondent No.2 and Advocate Shri. P. K. Dhavale for Non-applicant No.1,3 to 6.

5. Perused record. This suit has been filed by S.D.O. @ Competent Authority for Acquisition of National Highway No.161

Nanded-Hingoli-Washim-Akola against Durgabai Nivrutti Gawande and Smt. Minakshi Suresh Gawande for deciding that who are entitled for compensation amount of Rs.1,83,08,810/- of the acquired land out of land Gat No.44 of village Saykheda. Admittedly it is not disputed that, R.C.S. No.22/2018 has been filed by respondent No.2 for partition and separate possession in respect of the properties of village Saykheda Tq. Dist. Washim in respect of Gat No.124,14,23,44,47. This suit has been filed by S.D.O. and Land Acquisition Officer Washim to decide who is entitled for the compensation amount of the acquired land of Gat No.44 for the widening of National Highway No.161. Gat No.44 of village Saykheda is one of the suit property in R.C.S. No.22/2018. Applicant and respondents are parties to that suit. Land from the Gat No.44 i.e. one of the suit property in a partition suit R.C.S.22/2018 has been acquired by the applicant in this suit for widening of N.H. No.161. Therefore the issue of compensation amount of Rs.1,83,08,810/- from Gat No.44 of village Saykheda is also involved in the partition suit R.C.S. No.22/202018. The issues and parties in this suit and previous suit R.C.S. No.22/2018 are same. Therefore, this suit is liable to be stayed as per section 10 of Civil Procedure Code. Accordingly, I pass the following order.

ORDER

1. Application is allowed.
- 2 Parties to take not of this order.

Washim.
Date : 02/01/2023.

Sd/-
(M. T. Thaware)
2nd Jt. Civil Judge (Sr.Dn.),
Washim.

CERTIFICATE

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

Name of the Stenographer : B. V. Bhisade, Stenographer Grade-III

Name of the Court : Shri.M.T. Thaware
2nd Jt. C.J.S.D.Washim

Date : 02.01.2024

Order signed by the
presiding officer on : 02.01.2024

Order uploaded on : 04.01.2024