

**Order below Exh.18 in Spl. Civil Suit No.260/2022**

(C.N.R. No.MHAH020032902022)

The defendants have prayed to stay the proceedings in the present suit under Section 10 of the Code of Civil Procedure.

2) Heard both sides. Perused the record.

3) Following points for my determination, do arise for my consideration. I have recorded my findings thereon for the reasons discussed thereunder :-

Sr. No.	Points for determination	Findings
1	Whether the matter in issue in the present suit is directly and substantially in issue in Special Civil Suit No.65/2015?	In the negative
2	Whether Special Civil Suit No.65/2015 is instituted between the same parties as the parties in the present suit or between the parties under whom anyone of them claim or litigating under the same title?	In the negative
3	What order and cost?	Application is rejected.

REASONS**AS TO POINTS NO.1 TO 3 -**

4) The learned advocate for the defendants has

argued that the subject matter of dispute in both suits is identical and so also the parties as all the parties therein are real siblings. He also submitted that matter in issue in the present suit is directly and substantially in issue in Special Civil Suit No.65/2015. He clarifies that Special Civil Suit No.65/2015 has been filed by his sisters against the present plaintiffs and defendant no.1 for partition of the several properties including the property which is subject matter of dispute in the present suit. The plaintiffs in Special Civil Suit No.65/2015 have challenged the Will of their deceased father and therefore, the present suit being subsequent suit, it shall be stayed as the decree in present suit would effect the rights of his sisters in Special Civil Suit No.65/2015. He added that decision of this court on the quantum of shares of the parties in the present suit, may conflict with the adjudication of share of the plaintiffs in Special Civil Suit No.65/2015 and to prevent it proceedings shall be stayed under Section 10 CPC.

5) As against this the learned advocate for the plaintiff has submitted that the plaintiff has filed claim against his brother. The parties to Special Civil Suit No.65/2015 are not party before this court. The cause of action in said suit and the present suit is absolutely different and therefore, the application is not maintainable.

6) Before touching to the merits of the present case, let us understand the scope and object of Section 10 of CPC.

The provision reads as under-

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 title where such suit is pending in the same or any other Court in (India) having 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).

The object of said provision has been elaborated by the Hon'ble Supreme court in the cases relied upon by the defendants. The plaintiffs do agree with the underlying object of Section 10 CPC discussed by the Hon'ble Supreme Court in the cited cases.

7) The fundamental test to attract section 10 is, whether final decision in Special Civil Suit No.65/2015, would it operate as resjudicata to the issues in the present suit. In order to pass this test it is necessary to examine the pleadings of the parties in Special Civil Suit No.65/2015 as well as in the present suit. The defendants have filed certified copy of plaint in Special Civil Suit No.65/2015 with list Exh.23 but not the copy of the written statement filed by the defendant no.1 along with the present plaintiff. However, it is the matter of record that as Special Civil Suit No.65/2015 is pending in this court, the Hon'ble District Court has been pleased to transfer this suit i.e. Special Civil Suit No.260/2022 to this court for trying it simultaneously. As the record and proceedings of Special Civil Suit No.65/2015 lie with this

court, the pleadings therein could be read by the court. The present defendant no.1 does not deny this fact and he admits that he along with the present plaintiff while contesting Special Civil Suit No.65/2015 has file common written statement with present plaintiff. He does not deny the pleadings in said written statement. Rather he himself relies upon it as he is seeking stay of present suit until decision of Special Civil Suit No.65/2015.

8) Certified copy of plaint in Special Civil Suit No.65/2015 shows that it has been filed by the sisters of present plaintiff and defendant no.1. In the said suit, the sisters of plaintiff and defendant no.1 have challenged the Gift deed as well as Will executed by their deceased father and claimed partition and separate possession of their share in various properties including the subject matter in dispute in the present suit. I have gone through the record of Special Civil Suit No.65/2015. The written statement filed by the present plaintiff and defendant no.1 to Special Civil Suit No.65/2015 shows that they have claimed to have acquired joint ownership and possession to the subject matter in the present suit under Will and Gift deed executed by their deceased father. Thus, the matter directly and substantially in issue in Special Civil Suit No.65/2015 is “whether the present plaintiff and defendant no.1 have acquired absolute ownership to the suit property by virtue of the Will and Gift deed dated 19.11.2013 registered at Sr.No.2870 and 2867.”

9) In the present suit the plaintiff has claimed that he along with defendant no.1 has acquired ownership rights in the subject matter in dispute under mutation entry no.2124 and that their rights have been divided in between them as per mutation entry no.2113. The copies of said mutation entry have been filed by the present plaintiff on record along with list Exh.3 which shows that the suit property has been received by them under registered Gift deed bearing Sr.No.2867/2013 dtd.19.11.2013 executed by their father late Babanrao Bhandkar and that the plaintiff and defendant no.1 have mutually divided their shares to equal half on 16.01.2014 and got the mutation certified accordingly. It is claimed in the present suit that defendant no.1 and his son is trying to interfere with the plaintiff's share by attempting to sell it. The plaintiff and defendant no.1 through their written statement filed at Exh.55 in Special Civil Suit No.65/2015 have pleaded before the court in their joint / common written statement that they have acquired joint ownership and possession under the registered Gift deed dated 19.11.2013 executed by their father. Thus, the matter directly and substantially in issue in the present suit is "whether the defendant has unlawfully interfered with the plaintiff's joint ownership and possession and whether the plaintiff is entitled for partition and separate possession of the joint share."

10) It can be seen that the matter which is directly and substantially in issue in Special Civil Suit No.65/2015 is not

directly and substantially in issue in present suit. The plaintiffs in Special Civil Suit No.65/2015 are not party to the present suit. The pleadings and admitted facts do not suggest that the plaintiffs in Special Civil Suit No.65/2015 are necessary party to the present suit. Even the parties to both suits are not litigating under the same title. The essential ingredients of Section 10 CPC are thus, not made out. Moreover, adjudication or decree in Special Civil Suit No.65/2015 and present suit would not have any bearing upon each other as in Special Civil Suit No.65/2015 the plaintiffs may or may not get any share but existence of share of present plaintiffs and defendant no.1 is not at dispute. In such circumstances decree of declaration of joint ownership & possession of plaintiffs would not affect the rights of the plaintiffs in Special Civil Suit No.65/2015. For all these reasons, the cited authorities would not come to defendants' help in claiming the reliefs sought. I therefore, answer points no.1 & 2 in negative and in answer to point no.3 I pass following order -

ORDER

Application Exh.18 is hereby rejected with cost.

(Smt. S.G. Agrawal)

Date : 19.06.2024

08th Jt. Civil Judge, Senior Division,
Ahmednagar.

CERTIFICATE

I affirm that the contents of this PDF file are same word for word as per original order/judgment.

Name of stenographer	:	G.S. Mancharkar
Name of Court	:	Smt.S.G. Agrawal, 08 th Jt Civil Judge,Senior Division, Ahmednagar.
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