

**Jagdhar and Another Vs. Civil Judge (Junior Division), Banda and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/485071](http://sooperkanoon.com/485071)

**Court :** Allahabad

**Decided On :** Aug-20-1999

**Reported in :** 1999(4)AWC2967

**Judge :** D.K. Seth, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10 - Order 39, Rules 1, 2 and 4 - Order 43, Rule 1; [Constitution of India](#) - Article 227

**Appeal No. :** C.M.W.P. No. 34985 of 1999

**Appellant :** Jagdhar and Another

**Respondent :** Civil Judge (Junior Division), Banda and Another

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Punit Kumar Gupta, Adv.

**Judgement :**

**D. K. Seth, J.**

1. Leave is granted to convert the petition into one under Article 227 of the [Constitution of India](#).

2. The petitioners allege that the opposite party had filed a Civil Suit No. 308 of 1996 for injunction, in which an order of injunction was sought for by the plaintiff

opposite parties, which was contested upto the appellate court unsuccessfully. Thereafter the plaintiff opposite party had filed Original Suit No. 140 of 1999 in which he had obtained an order dated 31st March, 1999 granting injunction against the petitioners. It is this order which has been challenged in this petition together with a prayer for quashing of the plaint in Original Suit No. 140 of 1999.

3. Mr. P. K. Gupta, learned counsel for the petitioners contends that the parties and the suit property in Suit No. 140 of 1999 are the same as is involved in Suit No. 308 of 1996. Therefore, plaint of the subsequent suit is liable to be quashed.

4. I have heard Mr. Gupta at length.

5. Mr. Gupta had relied on a decision in the case of Thakur Matthili Ramanji Maharaj and another v. District Judge, Jhansi and another. 1996(3) AWC 2.241, and the decision in the case of Deva Ram and another v. Ishwar Chand and another, (1997) (1) ARC 286, in support of his contention for quashing of the plaint.

6. There is no doubt about the proposition laid down in the said decisions. But in the facts and circumstances of the present case, it is too early to attract the ratio decided in the said cases. If the suit is between the same parties involving the same property, in that event proceedings of the subsequent suit can be stayed by reason of resorting to Section 10 of the Code of Civil Procedure. It is submitted by the learned counsel for the petitioner that an application under Section 10 of the Code has been filed and is pending in the learned trial court. In such circumstances, the petitioner has not exhausted the remedy under Section 10 of the Code before coming to this Court.

7. Mr. Gupta then contends that despite earnest effort on the part of the petitioner, the application under Section 10 of the Code is not being disposed of. At the same time, the application under Order XXXIX, Rule 4 of the Code is also not being taken up for decision.

8. In such circumstances, the question of quashing of the plaint does not arise.

9. So far the order dated 31st March, 1999 is concerned that was an order under Order XXXIX, Rules 1 and 2 of the Code by the learned Civil Judge (Junior Division), against which an appeal is maintainable under Order XLIII. Rule 1 (r) of the Code before the District Judge. Therefore, this application is not maintainable before this Court against the order dated 31st March, 1999 passed by the learned Civil Judge (Junior Division), Banda, in Suit No. 140 of 1999.

10. So far as the question of quashing of the plaint is concerned, it appears to be misconceived. Inasmuch as in such case so long the earlier suit is not decided, the remedy being provided in Section 10 of the Code, the High Court will not exercise its power to quash the plaint. Such power is exercised by the High Court in exceptional circumstances where the process of Court appears to have been glaringly abused. 'In case the earlier suit is decided, the same can be resisted under Section 11 of the Code. These are matters which require exhaustive examination on facts on the basis of the materials produced before the Court. This Court cannot undertake such exercise in a writ proceeding. It would be prejudging the issues.

11. In this case, no such exceptional circumstances exist. Therefore, this is not a case fit for quashing the plaint. In the circumstances, it will be open to the petitioner to apply for early hearing of the application under Section 10 of the Code as well as the application under Order XXXIX, Rule 4 of the Code before the learned Court below. If any such application is made, it is expected that the same shall be decided as early as possible.

12. The writ petition, therefore, fails and is accordingly dismissed. Nocost.