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Court : Delhi

Decided On : Jan-07-1992

Reported in : 46(1992)DLT385

Judge : J.K. Mehra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10

Appeal No. : Civil Revision Appeal No. 892 of 1990

Appellant : Harnam Kaur

Respondent : Ajit Singh

Advocate for Pet/Ap. : D.S. Marwah and; S.S. Katyal, Advs

Judgement :

J.K. Mehra, J.

(1) This revision arises out of an order passed by the trial Court on an application of the defendant-respondent herein under Section 10 of the Code of Civil Procedure praying for the stay of the suit instituted subsequently on the basis that the matter in issue in this suit is the same as the matter in issue in the suit instituted by the defendant/respondent earlier against the petitioner and others.

(2) To appreciate the position in law, it will be in order to reproduce the Sections 10 and 151 of the Code of Civil Procedure :

S.10. Stay of suits : 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 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. Explanationn ; The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action'

S.151 : Saving of inherent powers of Court : Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court,'

(3) The expression 'the matter in issue is also directly and substantially in issue In a previously instituted suit between the same parties.....' has to be construed to mean the entire subject matter of the two suits should be the same. In other words, every matter in dispute should be directly and substantially in issue in the two suits. This construction is further supported by the use of the expression 'same cause of action' in the Explanationn to Section 10 CPC. It has been held by this Court in Sagar Shamsher Jung Bahadur Rana and Another v. The Union of India and Others, : AIR1979 Delhi118 that the 'matter in issue' means all disputed material questions.

(4) In the present case. the respondent had instituted a suit for injunction against the petitioner and S/Shri Balwant Singh and Salwant Singh. It may further be pointed out that the petitioner in the present, case is the widow of late Shri Veer Singh, while respondent and S/Shri Balwant Singh and Salwant Singh are her sons. The respondent had instituted a suit for permanent injunction bearing No. Suit No. 512/90 against the petitioner herein and S/Shri Balwant Singh and Salwant Singh restraining the petitioner and her two sons from selling, transferring,

alienating or creating any charge on the portion of the suit property bearing No. D-90, Model Town, Delhi where the petitioner and her two sons are living claiming ownership of a portion thereof on the basis of a gift deed dated 17.10.86. The said deed was duly registered with the Sub-Registrar. K;shmere Gate, Delhi vide Document No. 4465 in Addl. Book No. 1 Vol. No 4648 on pages 65 to 75. In their written statement the petitioners herein have denied the existence of any right, title or interest in the said property or any part thereof in favor of the plaintiff, respondent herein. The petitioner has alleged in her written statement that she is an old lady of 80 years and is illiterate. She has further pleaded that the respondent having separated from the family in the year 1965 after obtaining his share from his late father had already built his own house where he has residing since 1965 and there could not be any question of gifting any portion of the property in question. The genuineness of the said gift deed has also been disputed In the said previously instituted suit, thereforee, the Court could either grant or decline the relief of declaration claimed by the petitioner in her suit. It could not grant the relief of declaration declaring the document whereby a certain portion is alleged to have been gifted to the respondent void or inoperative on the various pleas set out in the written statement. To be able to succeed in her own right the petitioner has to institute a separate suit as provided under Section 31 of the Specific Relief Act. It is in these circumstances that the petitioner had to institute a suit for declaration seeking to set aside the alleged Gift Deed dated 17th October, 1986.

(5) A perusal of the plaint in the subsequent suit makes it amply clear that the relief claimed in the subsequent suit could not have been granted in the previously instituted suit by the trial Court. I also find that in the previously instituted suit the other brothers of the respondent were also parties whereas the said two gentlemen are not parties to the subsequent suit.

(6) But it cannot be disputed that most of the evidence in the two suits is likely to be common. The question of genuineness or otherwise of the Gift Deed of 17th October 1986 has to be considered by the Court in both the suits, but the failure of the plaintiff in the previously instituted suit will not ipso facto result in a decree of declaration in favor of the petitioner who is plaintiff in the subsequent suit. The

rights of other brothers of the respondent are also to be considered in the earlier suit while no such determination would be called for in the subsequent suit. The object of the rule incorporated in Section 10 Civil Procedure Code appears to prevent parties in parallel suits from litigating in more than one Courts at one and the same time. The said rule does not apply to the counter claims. Thus clearly bringing out the object of legislature that in case the entire controversy of claim and counter-claim falls for consideration before the same Court both could be proceeded with simultaneously, but it is only if separate suits are instituted that the matter needs to be considered in the light of provisions of Section 10 CPC.

(7) The Courts also have another responsibility in cases of this type that is to examine if the subject matter in issue in two suits are not identical, but there are common questions of fact which fall for determination and/or bulk of the evidence in both the suits if they are proceeded with is likely to be common. If so, to direct, in the interest of justice, that both the suits be tried together by exercising powers under Section 151 CPC. In this behalf, the reference may be made to the case of J.C. Batra v. Radhey Shayam : 1975 Rajd LR 164 wherein It is observed as under ;

'THE Court has inherent right to order consolidation of suits in appropriate cases. In M/s. Bokaro & Ramgur Ltd. v. State of Bihar and Others: : AIR1973 Pat340 , it was observed that in deciding whether two suits should be consolidated or not the whole question is whether or not in the long run it will be expeditious and advantageous to all concerned to have the suits tried together. Further where it appears that there is sufficient unity and similarity in the matter in issue in the two suits two warrant their consolidation, it was observed that it would be a fit case for consolidation. In Manohar Lal Chopra v. Rai Bahadur Rai Raja Seth Hiralal, : AIR 1962 SC527 , their Lordships of the Supreme Court observed that Section 151 of the Civil Procedure Code itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement it was not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the

parties before it.'

(8) In the present case, it cannot be said that the matter in both the suits is the same since one is a suit for injunction and the other is for declaration as already observed, the parties in both the suits are not identical. In the subsequent suit it is the petitioner before me and the respondent only while the previously instituted suit, the petitioner's other two sons are also made parties. The sole objection of Section 10 Civil Procedure Code is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon the same cause of action, the same subject matter and the same relief.

(9) The test that the provisions of Section 10 Civil Procedure Code would be attracted if it was held that decree in the previously instituted suit would bar the subsequent suit on the principle of *res judicata* cannot be said to be available in the present case in as much as the scope of the relief and the causes of action in both the suits appear to be different.

(10) In another case, being Suit No. 1451/85: entitled *The Gwalior Rayon Silk Mfg. v. Krishna Sales (P) Ltd*, while agreeing with the ratio of the judgment in *J.C. Batra (supra)*, this Court had refused to stay the suit instituted subsequently and had consolidated the two suits in view of the facts that there was to be a lot of common evidence in the two suits and since both the suits related to the same contract directed that both the suits be taken up together for trial as this course would save both time and cost of the litigation between one parties. This course appears to have been resorted to under Section 151 Civil Procedure Code and I am in respectful agreement with the said judgment of this Court in *J.C. Batra's* case (*supra*) and order in Suit No. 145/8-referred to above. In this case also there is going to be a lot of common evidence. In this view of the matter, the impugned order cannot be sustained and must be set aside.

(11) I, therefore, allow this revision petition and set aside the impugned order and direct that both the suits being Suit No, 403/90 and S. No. 512/90 be tried together. Since the suit previously instituted is pending before a Sub- Judge and that the Sub-Judge has no pecuniary jurisdiction to entertain and try the suit instituted subsequently, I direct that the Suit No. 512/90 pending in the Court of

Smt. Bimla Makan, Sub Judge 1st Class be transferred to the Court of Shri L.D. Mual, Addl. District Judge who will try and dispose of both the suits together. This course will be both expeditious and advantageous and save both time and cost of litigation between the parties.

(12) Revision Petition stands disposed of. In the peculiar circumstances of the case parties are left to bear their own costs. Petition disposed of.

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