**W.P. No. 8778/2016**

**(MAHANT HANUMAN DAS GURU SWAMI PURSHOTTAM DAS JI VS. SAPNA CHOUDHARY & OTHERS)**

**03.11.2016**

Shri Mrigendra Singh, learned senior counsel with Shri Sachin Yadav, learned counsel for the petitioner.

Shri Sanjay Kumar Agrawal, learned counsel for the respondent Nos. 1 & 3.

The petitioner has filed the present petition under Article 227 of the Constitution of India challenging the order dated 03.05.2016 passed by the II Additional District Judge, Anuppur in Civil Suit No. 4-A/2016 thereby rejecting the application filed by the petitioner under Section 10 of the C.P.C.

**2.** The respondent/plaintiff had filed a civil suit before the Court of 2nd Additional District Judge, Anuppur challenging the order dated 04.12.2015 whereby application preferred by the respondent No. 1 under Public Trust Act for changing the office bearer of trust after the death of Principal Trustee / Foundation Trustee Swami Gopalnandji has been rejected. The said civil suit was filed on the ground that the present petitioner was appointed as Principal Trustee of the Shiv Gopal Charitable Trust, Amarkantak. Thereafter, possession of trust property was given to the petitioner. The trust Shri Shivgopal Dharmarth Trust, Amarkantak is registered as Public Trust vide

order dated 28.11.2007 and Swami Gopalnandji was appointed as Principal Trustee/Foundation Trustee of the said trust. Swami Gopalnandji died on 24.05.2015 and after the death of Swami Gopalnandji, the plaintiff is handling the affair of trust. It is further stated in the plaint that the petitioner/defendent No. 2 is not disciple of Swami Gopalnandji Maharaj and he is coming from Varanasi and has been living in the Ashram last one year and, therefore, the order dated 04.12.2015 passed by respondent No. 4 be declared null and void. Thereafter, respondent No. 1/plaintiff moved an application under Order 40 Rule 1 of the CPC for appointment of receiver and the said application is pending for adjudication. It is further stated that before filing the above stated suit, respondent No. 1/plaintiff has already filed a Civil Suit No. 300A/2015 for permanent injunction against the petitioner in respect of the same subject matter and it is pending before the Court of Civil Judge Class-I, Rajendragram, District Anuppur.

**3.** After receiving the summons of the said suit, the petitioner has filed an application under Section 10 of the CPC before the Court of 2nd Additional District Judge, Anuppur for staying the proceedings of the said suit on the ground that respondent No. 1/plaintiff has already preferred a civil suit against the petitioner in regard to the same subject matter before the Court of Civil Judge Class-I, Rajendragram, District Anuppur. Respondent No. 1/plaintiff has also filed reply of the said application.

**4.** After hearing the arguments of both the parties, the trial Court vide order dated 03.05.2016 has dismissed the said application. Being aggrieved by the said order, the petitioner has filed the present petition.

**5.** Learned senior counsel appearing on behalf of the petitioner argues that the trial Court has erred in dismissing the application preferred by the petitioner under Section 10 of the CPC. He further argues that the subject matter of both the suits are substantially identical and, therefore, as per Section 10 of the CPC, the Court ought to have allowed the application preferred by the petitioner. He further relied on the judgement passed by the Apex Court in the case of **National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, (2005) 2 SCC 256** as well as the judgement passed by this Court in the case of **Dadolwa and Another Vs. Ramakant and Others, 2014 (2) MPLJ 606**. On the basis of these judgements he argues that it is not necessary that there should be complete identity of parties in both matters.

**6.** Learned counsel appearing on behalf of the respondents supports the order passed by the trial Court and argues that the relief which is claimed in both the suits is not identical. He further submits that parties of both the suits are different. The previous suit is filed seeking permanent injunction against the petitioner, however, the subsequent suit was filed for challenging the order dated 04.12.2015. Thus, the reliefs which are claimed in both the suits are different and the parties are

also different. He further submits that the fundamental test to attract the Section 10 of the CPC is whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. He further submits that Section 10 applies only in the case where the whole of the subject matter in both the suits is identical. For the said submissions he relied on the judgement passed by the Apex Court in the case of **National Institute of Mental Health & Neuro Sciences (supra)** as well as the judgement passed by the Apex Court in the case of **Aspi Jal and Another Vs. Khushroo Rustom Dadyburjor, (2013) 4 SCC 333.**

**7.** I have heard learned counsel for the parties and perused the record as well as order passed by the trial Court. From perusal of the plaint (Annexure P/2) which is subsequent suit the respondent No. 1/plaintiff has prayed for following reliefs:-

> **अ–** यह कि पंजीयक एवं अनुविभागीय अधिकारी पुष्पराजगढ़, जिला अनूपपुर, म0प्र0क0रा0प्र0क्र0–01–02 / बी–113 / 204–15 में आदेश दिनांक–04/12/2015 को प्रभावशून्य घोषित किया जाकर प्रति0क्र0 2 को मुख्य न्यासी/अध्यक्ष/व्यवस्थापक पद से हटाने की डिक्री पारित की जावे।
>
> **ब–** यह कि वादियागण को दावा के पैरा क्रमांक 3 में वर्णित न्यास सम्पति का स्वामी घोषित किया जावे तथा प्रस्ताव दिनांक 15.08.14 के अनुसार न्यास पंजी में नाम प्रविष्ट किए जाने की डिक्री पारित किया जावे।
>
> **स–** यह कि दावा के पैरा क्र0 3 में वादियागण का

वैद्य आधिपत्य है लेकिन कब्जा पंचनामा दिनांक– 04/12/2015 के प्रभाव में प्रति0क्र0 2 से वादीगण को कब्जा वापस दिलाया जाय।

**द–** यह कि अन्य अनुतोष जो माननीय न्यायालय उचित समझे वादीगण को प्रति0 से दिलायी जावे ।

**8.** As well as in the previous suit he has prayed for following reliefs:-

**अ–** यह कि वादीगण के दावा के पैरा क्र0 2 में वर्णित आराजी एवं उस पर निर्मित संरचनाएं तथा प्रतिष्ठित देवी देवताओ के आरती पूजन, भोग भडारा तथा उपयोग उपभोग में स्वयं अपने नात, रिस्तेदार, मददगार आदि माध्यम से प्रतिवादी किसी प्रकार से हस्ताक्षेप न करें न करावें, इस हेतु वीदगण/न्यासियो के पक्ष में प्रति0 के विरूद्ध स्थायी निषेधाज्ञा की डिक्री पारित की जावे।

**ब–** यह कि अन्य अनुतोष जो माननीय न्यायालय उचित समझे वादीगण को प्रति0 से दिलायी जावे ।

**9.** From perusal of the plaint it appears that the plaintiffs are also different in both the suits. The previous suit is filed by Shivgopal Dharmarth Trust and respondent No. 1 was impleaded as a party to the said civil suit in the capacity of her president. While the subsequent suit has been filed by the respondent No. 1 in her personal capacity. Thus, from perusal of both the plaints, it is clear that the parties in both the suits are different and the relief which is claimed by the plaintiff in

both the suits is also not identical.

The Section 10 of the C.P.C is read 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] 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]."

**10.** Thus, as per the said Section for attracting the provisions of Section 10 of the C.P.C, the parties to the suit should be same and the subject matter in the suit must be directly and substantially the same. The Apex Court in the case of **Aspi Jal and Another (supra)** in paragraphs 11 and 12 have held as under:-

> "11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether "the matter in issue is also directly and substantially in issue in previously instituted suits". The key words in Section 10 are "the matter in issue is directly and substantially in issue in a previously instituted suit". The test for applicability of Section 10 of the Code is whether on a final decision being reached

in the previously instituted suit, such decision would operate as res judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in the affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what "the matter in issue" exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the code, the entire subject-matter of the two suits must be the same. This provision will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the

> Code is not attracted in the facts and circumstances of the case."

**11.** As per the said judgement the entire subject matter of the two suits must be the same.

**12.** In the case of **National Institute of Mental Health & Neuro Sciences (supra)** the Apex Court in para 8 has held as under:-

> "8.....The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."

**13.** Thus, as per the said judgement the Section 10 would apply only if there is identity of the matter in both the suits is similar meaning thereby, that the whole of the subject-matter in both the proceedings is identical.

**14.** Thus, in light of the observations made by the Apex Court in both the cases as stated above, the judgement relied by counsel for the petitioner in the case of **Dadolwa and Another (supra)** does not give any help to the petitioner because as per both the judgements **National Institute of Mental Health & Neuro Sciences (supra) and Aspi Jal and Another (supra),**

held by the Apex Court for attracting the provisions of Section 10 of the CPC. The subject-matter of both the suits must be directly and substantially the same and the entire subject matter of both the suits should be identical. Thus, the contention of learned senior counsel for the petitioner that some of the issues are common in both the suits cannot be acceptable. As the reliefs which are claimed by the petitioner in both the suits are not identical and, therefore, the judgement passed in the previous suit will not operate as *res judicata* in the subsequent suit.

**15.** Thus, in view of the aforesaid discussion, I do not find any error or material irregularity committed by the trial Court in dismissing the said application.

**16.** Accordingly, the petition has no force and is deserves to be dismissed with no order as to costs.

**(Ms.Vandana Kasrekar)**
**Judge**

**ashish**