

THE HIGH COURT OF MADHYA PRADESH

Misc. Petition No. : **600 of 2019**
Parties Name : **Smt. Pooja Soni**
 : **Versus**
 : **Dinesh Kumar and others**

Misc. Petition No. : **601 of 2019**
Parties Name : **Smt. Pooja Soni**
 : **Versus**
 : **Dinesh Kumar and others**

Bench : **Hon'ble Shri Justice Rajendra Kumar (Verma)**

Whether approved for reporting : **Yes/No**

Name of counsel for parties : **For petitioner: Shri Ashish Shroti, Advocate**

 : **For respondents: Shri Satyam Agrawal, Advocate**

Law laid down : **To exercise of power under Section 10 of the C.P.C., an application is not required to be filed.**

Significant paragraph numbers : **10 to 18**

O R D E R

Jabalpur, dated 12 /11/2021

Regard being had to the similitude of the facts and controversy in question, this petition is heard analogously along with M.P.No.601/2021 and a common order is being passed which covers the fate of both the petitions as referred above. For conveniences sake, facts of the case narrated in

M.P.No.600/2021 are taken into consideration.

2. By the instant petition, the petitioner has called in question the legality and validity of the order dated 28.06.2018, Annexure P/4 passed by the Court of First Civil Judge Class-I, Nasrullaganj, District Sehore, whereby an application filed under Section 10 of the Code of Civil Procedure by the petitioner/defendant No.3 has been rejected.

3. As per the petitioner/defendant No.3, she is the owner and in possession of the property consisting of agricultural land bearing survey Nos.272/1/2/2, 273 & 354/273 situated at village Cheech, Tahsil Nasrullaganj, District Sehore (hereinafter referred to as 'the suit property') purchased by her out of her stridhan and as a mark of respect, she got mutated the name of her husband (respondent No.2/defendant No.1) in the revenue record. The respondent No.2 borrowed Rs.2.00 lacs from the respondent No.1/plaintiff for treatment, which he returned to the respondent No.1. At the time of taking money, the respondent No.1 kept the *Rin-Pustika* in respect of suit property with him, which was supposed to be returned after getting the money back, but he had not returned the Rin Pushtika ever after receiving the money back due to malafide intention.

4. As per the petitioner, under the garb of document of loan

transaction, the respondent No.1 got a sale-deed executed by the respondent No.2 in his favour on 23.04.2016. The petitioner, therefore, was constrained to file a suit for declaration that she is the sole owner of the suit property and that the sale-deed executed in favour of respondent No.1 by the respondent No.2 is null and void. She has also prayed for a decree of permanent injunction. The suit is registered as R.C.S. No.26-A/2017. The respondent No.1 has also filed a suit for permanent injunction on the strength of sale deed dated 23.04.2016 executed in his favour by the respondent No.2. The suit is registered as RCS No.23-A/2017 (new No. RCS No.38-A/2017). The respondent No.1 had filed the suit on 31st July, 2017, while the petitioner had filed the suit on 02nd August, 2017 i.e. after two days.

5. The petitioner has filed an application under Section 10 of CPC praying for stay of the suit filed by the respondent No.1 in the suit filed by the respondent No.1 i.e. RCS No.23-A/2017. The respondent No.1 opposed the application. The trial Court vide order dated 28.06.2018, Annexure P/4 disposed of the application directing stay of the petitioner's suit (RCS No.26-A/2017) during the pendency of the suit (RCS No.23-A/2017 new No.RCS 38-A/2017) filed by the respondent No.1.

6. Learned counsel for the petitioner submits that the trial

Court has failed to notice that it is the petitioner's application, wherein she has prayed for stay of the respondent's suit, at best, the trial Court could have rejected the application. The trial Court further failed to see that for stay of the petitioner's suit, an application ought to have been filed in her suit. Further, the trial Court failed to appreciate that in petitioner's suit, there are as many as six defendants while in the suit filed by the respondent No.1 there are only three defendants. Thus, it could not have been held that the parties in both the suit are same. Learned counsel for the petitioner further submits that the trial Court failed to properly appreciate the facts of the case and erroneously stayed the proceedings of the suit filed by the petitioner. It is also submitted that the trial Court has failed to consider that under Section 10 of CPC for stay of suit, an application is required to be filed in the same suit, however, in the instant case, the application was filed in another suit, but the trial Court has directed for stay of the petitioner's suit. Thus, trial Court erred in exercising the powers under Section 10 of CPC. It is also submitted by the petitioner that trial Court further should have seen that since both the suits are pending in the same court, the interest of justice would have been met by directing consolidation of hearing of both the suits instead of staying the proceedings of one suit. Hence, the impugned

order passed by the trial Court is illegal and is liable to be set aside. Learned counsel for the petitioner has relied upon a judgment passed by the Court in the cases of **Kundanmal vs. Vivekchand, 1961 MPLJ SN 266** and **Sukhawatrai vs. Prem Narain, 1962 MPLJ SN 313**.

7. After rejection of the application under Section 10 of CPC vide order dated 28.06.2018, the petitioner filed another application under Section 151 of CPC for consolidating hearing of both the suits. The respondent No.1 opposed the application by filing a reply to the same stating that subject matter of both the suits are different. The learned trial Court has rejected the said application on the ground that the proceedings of the petitioner's suit has already been stayed vide order dated 28.06.2018. Learned counsel for the petitioner submits that the trial Court grossly erred in passing the order staying the proceedings of the petitioner's suit, Infact in the fact and circumstances of the case, both suits ought to have been consolidated and to be heard together. Because of the stay of the petitioner's suit, she is deprived of the relief prayed for by her. Thus, the impugned order passed by the trial Court dated 17.01.2019 is illegal and is liable to be set aside. He has relied upon a judgment passed by this Court in the case of **Manakchand Ruthia vs. Rajendra Kumar Agrawal and**

another, 2008(2) MPHC 64.

8. Learned counsel for the respondent No.1 submits that the orders passed by the trial Court are as per the law and there is no illegality or irregularities in the same. The matter in issue is identical in both the suits. The suit filed by the respondent No.1 is earlier and, therefore, the trial Court has rightly stayed the later suit filed by the petitioner and once the proceedings of the suit have been stayed, there is no occasion to consolidate both the suits. He has relied upon the judgments of this Court passed in the cases of **Sanjay Goyal vs. Rachna Goyal, 2010(3) MPJR 246** and **Poonamchand vs. Maruti Madanmohanji and others, 2007(3) MPHT 24.**

9. I have heard learned counsel for the parties at length, perused the records as the orders passed by the trial Court.

10. Section 10 of the Code of Civil Procedure reads 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].

Explanation:- 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.”

11. As per this Section, 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, then the subsequent suit can be stayed by the trial Court.

12. In the present case, the petitioner had subsequently filed a suit against the respondent No.1 to declare the registered sale-deed dated 23.04.2016 as null and void and permanent injunction and to restrain dispossession of her and not to alienate the suit property. The respondent No.1 had also filed a suit, initially against the respondent Nos. 2 & 3 for permanent injunction and later on the petitioner has been impleaded as defendant No.3, on the basis of the sale-deed executed by the respondent No.2 in favour of the respondent No.1 dated 23.04.2016. Copy of the plaints filed by the petitioner and the respondent No.1 respectively in RCS No.26-A/2017 and 23-A/2017 (new 38-A/2017) are Annexure P/1 and P/2.

13. After perusing the plaints filed by the parties, it is clear that issues in both the suit are not the same, although some parties and suit property in both the suits are same, however, in previously instituted suit, the respondent No.1 has claimed a relief of permanent injunction and in the subsequent suit, the

petitioner seeks a relief of declaration and permanent injunction. Thus, the reliefs claimed in both the suits are different.

14. In cases of **Kesrimal Vs. Laxmi Narayan 1956 Madh BLJ 1134** and **Radheshaym Vs. Kashi Nath, AIR 1960 MP 169**, this Court has held that for the applicability of Section 10 of the C.P.C. there must be complete identity of the entire two suits. In **Ram Heth Vs. State of U.P. AIR 1979 Allahabad 114(Full Bench)**, it was held by the Full Bench that for the applicability of Section 10 all the issues arising in the two suits must be the same. Main issue or some issues in both the suits substantially are not sufficient to hold that Section 10 of the C.P.C. applies.

15. In the judgment reported in **National Institute Of Mental vs C. Parameshwara AIR 2005 SC 242** the scope of Section 10 of the C.P.C. has been dealt with by the Hon'ble Supreme Court which reads as follows:

“The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues, which are directly and substantially in issue, in previously instituted suit. The language of section 10 suggests that, it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature

instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suit is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previously 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 subject matter in both the proceedings is identical".

16. It is settled law that for the applicability of Section 10 the test is whether on a final decision being reached in the previously instituted suit, such decision would operate as *res-judicata* in the subsequently instituted suit as observed by the Privy Council in **Annamalay Chetty Vs. B.A. Thornhill, AIR 1931 PC 263**, if the decision in one suit would have the effect of being *res-judicata* in respect of the issues arising in the subsequently instituted suit, then it would not be proper to proceed with the trial on the vary same issues in a subsequently instituted suit.

17. In the present case, in subsequently instituted suit, the plaintiff seeks declaration that the sale deed dated 23.4.2016

executed in favour of defendant No.1 is null and void and the plaintiff is the sole owner in possession of suit property. Plaintiff has also prayed of decree for permanent injunction against the defendants. In previously instituted suit filed by respondent No.1, the plaintiff has claimed only permanent injunction so final decision in previously instituted suit would not operate as *res judicata* in the subsequent suit.

18. So far as the contention of learned counsel for the petitioner that the learned Trial Court failed to consider that under Section 10 of the C.P.C. for stay of suit, the application is required to be filed in the same suit and in the instant case, the application was filed in other suit while the trial Court has directed for stay of petitioner's suit, therefore, the Court below erred in exercising the powers under Section 10 of the C.P.C, is concerned, in **Munnilal Vs. Sarvajeet AIR 1994 Rajasthan 22**, it has been held that the Court can *suo motu* the stay the second suit under Section 10 of the C.P.C. So it is clear that to exercise of power under Section 10 of the C.P.C., an application is not required.

19. Now the question is that whether both the suits should be consolidated?

20. The Code of Civil Procedure does not specifically provide for consolidation of suits. Consolidation of suits in exercise of

powers with or without consent of the parties is a phenomenon well established and in various High Courts of the country before whom question of consolidation have chosen to consolidation under inherent jurisdiction of the Court. [See **Narayan V. Jankibai AIR 1915 Bom 1 Nankoo vs Nagnur AIR 1953 Hyd 130(DB), Philip Vs. Bata Shoe Co. 1959 Ker Lt 1346, Kali Charan Dutt Vs. Surja Kumar Mandal 17 Cal Wn 526**].

21. The object behind consolidation of suits is to avoid multiplicity of suits or proceedings, chances of conflicting decisions on the same point, to prevent delay and to avoid unnecessary expenses. [See **Bharat Nidhi Ltd Delhi Vs. Shital Pra AIR 1981 Del 251**].

22. It has been held by the Apex Court in the case of **Prem Lala Nahata and Anr vs. Chandi Prasad Sikaria; (2007) 2 SCC 551** that :

“it cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the

rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury's Laws of England, Volume 37, paragraph 69). If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognised in the court obviously gives rise to the position that mere misjoinder of parties or causes of action is not something that creates an obstruction even at the threshold for the entertaining of the suit”.

23. The object of consolidation of suits is to avoid multiplicity of proceedings and unnecessary delay and protraction of litigation. These objects are not in any way in conflict with the objects of Section 10. On the contrary, consolidation of suits promotes such objects. Hence, a court has inherent power to consolidate suits between the same parties in which the matter in issue in both the suits substantially the same. Section 10 was never intended to take away the inherent power of the Court to consolidate for the interests of justice. The Court may, however, refuse to consolidate suits if it would be against public policy and encourage multiplicity of proceedings. [**See Indian Bank Vs. Maharashtra State Co-**

operative Marketing Fedration 1998 5 SCC 69, Desh Bhushan Vs. Mahajan 1997 AIHC 2530 and Anand Deep Vs. Ranjeet Kaur AIR 1992 DL 87].

24. In the present case, suit property and most of the parties are the same in both suits, matter in issue is also same to some extent, so to avoid multiplicity of proceedings and unnecessary delay and protraction of litigation, consolidation of both suits would be in the interest of justice.

25. In the result, impugned order dated 28.6.2018 passed by Additional Judge to the Court of First Civil Judge, Class-I Sehore in R.C.S. No.38-A/2017 and order dated 17.1.2019 passed by Additional Judge to the Court of First Civil Judge, Class-I Sehore in R.C.S. No.27-A/2017 (New RCS No.38-1/17) are hereby set aside and learned trial Court is directed to consolidate both the suits, try and decide the same in accordance with law.

26. The petitions stand allowed and disposed of. No order as to costs.

**(Rajendra Kumar (Verma))
Judge**