

learned trial Judge allowed the Chamber Summons taken out by respondent No.3- original defendant No.3 under Section 10 of Code of Civil Procedure, 1908 (for short 'C.P.C.') for staying proceedings of L.C.Suit No.4540 of 2010 till disposal of S.C. Suit No. 5387 of 1999. The parties shall hereafter be referred to as per their status before the trial Court. The relevant and material facts giving rise for filing of the present Petition, briefly stated, are as under.

3. The plaintiff has instituted S.C. Suit No. 5387 of 1999 in the City Civil Court, Mumbai on or about 31/08/1999 against New Navrang Co-operative Housing Society Ltd. interalia praying for following reliefs.

(a) That this Hon'ble Court be pleased to declare that the defendants are the trespassers on plaintiff's plot of land being the plot marked "A" forming part of land bearing C.S. No. 669 (part) admeasuring 72 square metres and more particularly shown in purple colour on the plan annexed at Exhibit "A" hereto;

(b) That this Hon'ble Court be pleased to issue Order and direction upon the defendants to vacate and hand over possession of the plot of land being the plot marked "A" forming part of land bearing C.S. No. 669 (part), admeasuring 72 square metres and more particularly shown in purple colour on the plan annexed at Exhibit "A" hereto;

(c) That this Hon'ble Court be pleased to pass an Order and Decree upon the defendants to pay mesne profit/compensation to the Plaintiff for wrongful use, occupation, possession and enjoyment of plot of land, being the plot marked "A" forming part of land bearing C.S. No. 669 (part), admeasuring 72 square metres and more particularly shown in purple colour on the plan annexed at Exhibit "A" hereto, at

Rs.1000/- per month or any other amount as this Hon'ble Court deems fit and proper, from the date of filing of the suit till the date of passing of the Decree for possession and thereafter till possession is handed over by the Defendants to the Plaintiff;

(d) That this Hon'ble Court be pleased to grant a permanent order and injunction restraining the Defendants by themselves, their members, office bearers, servants, agents or any person or persons claiming through or under them from dealing with, disposing of, alienating, encumbering creating any third party rights or developing or constructing on the plot marked "A" forming part of land bearing C.S.No.669(part) admeasuring 72 square metres and more particularly shown on plan in purple colour on the plan marked "A" hereto or making any claim to the plot marked "A" forming part of land bearing C.S.No. 669 (part) admeasuring 72 square metres and more particularly shown on plan in purple colour on the plan Exhibit "A" hereto, in any manner whatsoever ;

(e) That this Hon'ble Court be pleased to appoint the Court Receiver or some other fit and proper person as Receiver under Order XL Rule 1 of the Code of Civil Procedure in respect of the plot marked "A", forming part of land bearing C.S.No. 669 (part) admeasuring 72 square metres and more particularly shown in purple colour on the plan Exhibit "A" hereto, with such further orders and directions as this Hon'ble Court deems fit and proper in the nature and circumstances of the case;

(f) That this Hon'ble Court be pleased to grant a permanent order and injunction restraining the Defendants by themselves, their members, office-bearers, servants, agents or any person or persons claiming through or under them from parking their cars on Plot Nos, 6A and 7B and from throwing waster on the access road and on plot marked "A" forming part of land bearing C.S.No. 669(part) admeasuring 72 sqaure metres and more particularly shown in purple colour on the plan Exhibit "A" hereto and from leaving, dumping or storing garbage,

debris and any other material on the plot marked "A" forming part of land bearing C.S.No. 669 (part) admeasuring 72 square metres and more particularly shown in purple colour on the plan Exhibit "A" hereto and also on Plot No. 6A and 7B and from allowing the flow of waste water from cleaning of cars and otherwise from Defendant's Plot No. 2 on the said Plot No. 7B.

(g) That this Hon'ble Court be pleased to grant a permanent order and injunction restraining the Defendants by themselves, their members, office-bearers, servants, agents or any person or person claiming through by or under them from in any manner permitting, authorizing or allowing occupants, members, friends, relatives, guests, or other plot-holders and any other person from using the Plaintiff's plot of land i.e. Plot No. 6A and/or 7B through Defendant's Plot No.2 to the Plaintiff's Plot No. 6A and/or 7B as thoroughfare either by foot or by vehicles or in any other manner whatsoever.

(g1) that Honb'le Court be pleased to direct the Defendants, its members and all those who are claiming through or under them by :

(i) a mandatory order to remove the Boards/Signboards/Placards put up in and around the said Plot Nos. 6A and 7B and further.

(ii) restrain the Defendants by permanent injunction from putting up and/or fixing any boards/signboards/placards in and around Plot Nos. 6-A and 7-B bearing C.S.No. 669 (part) of Malabar and Cumballa Hill Division, Mumbai 400 026 and ,

(iii) to remove the vehicles, if any, parked on the said Plot Nos.6-A and 7-B and be prevented/restrained from making use of the said Plot Nos.6-A and 7-B for parking of the vehicles, or for any purpose whatsoever other than passing and re-passing through the same for limited purpose of having access to their Plot No.2.

(g2) that Hon'ble Court be pleased to direct the Defendants and all those who are claiming through or under them by a mandatory Order to remove the temporary cabin, barricade and security guard posted on the said Plot No. 6-A bearing C.S.No. 669

(part) of Malabar and Cumballa Hill Division, Mumbai – 400026.

4. The petitioner – plaintiff has instituted Suit No. 4540 of 2010 (High Court Suit No. 2682 of 2010) on 28/01/2010 against defendants No. 1 to 3 viz. defendant No.1-Union of India, defendant No.2- Municipal Corporation of Greater Mumbai and defendant No.3- New Navarang Co-operative Housing Society Ltd. S.C.Suit No.5387 of 1999 was filed by the plaintiff only against New Navrang Co-operative Housing Society Ltd. The only defendant in S.C. Suit No. 5387 of 1999 is defendant No.3 in High Court Suit No. 2682 of 2010.

5. Defendant No.3 took out Chamber Summons under Section 10 of C.P.C for staying proceedings of L.C.Suit No. 4540 of 2010 (H.C.Suit No. 2682 of 2010) on the ground that matter in issue in the earlier suit is also directly and substantially in issue in the subsequent Suit. The learned trial Judge has allowed the Chamber Summons relying upon the decision of the Apex Court in the case of *National Institute of Mental Health and Neuro Sciences Vs. C.Parmeshwara*, (2005) 2 Supreme Court Cases 256 and in particular, paragraph 8 thereof,.

6. Mr.Jain submitted that the learned trial judge failed to appreciate that parties in first suit and second suit are neither same nor they are litigating under the same title. He submitted that

Section 10 lays down two conditions namely i) that matter in issue is also directly and substantially in issue in a previously instituted suit and ii) that suit must be between the same parties or between parties under whom they or any of them claim litigating under the same title. As far as the second condition is concerned, the learned trial Judge has not recorded any finding as to whether that is satisfied or not.

7. On the other hand, Mr.Menon supported the impugned order. He has taken me through the averments made in the first suit and second suit as also prayers made in both the suits. He submitted that basically, plaintiff is claiming ownership over plot No. 6A and controversy is whether plaintiff has any title over that property or whether defendants have any right, title and interest over that property. In other words, matter directly and substantially in issue is about the ownership rights of the plaintiff over plot No. 6A. The learned trial Judge was justified in allowing the Chamber Summons on the basis of the decision of the Apex Court in the case of **National Institute of Mental Health and Neuro Sciences** (*supra*).

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Sections 10 of C.P.C. 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.”

9. The learned trial Judge has extracted portion of paragraph 8 of the decision of the Apex Court in the case of **National Institute of Mental Health and Neuro Sciences** (*supra*) which is under :

“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.”

Paragraph 8 of decision of the Apex Court in the case of **National Institute of Mental Health and Neuro Sciences** (*supra*) reads as under :

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 suits is identical. 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 contra-distinction 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.

10. Perusal of extracted portion of paragraph 8 shows that the Apex Court has held that the object underlying 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 question is whether the learned trial Judge has considered this aspect while passing the impugned order. The learned trial Judge has considered the subsequent portion of paragraph 8 and has observed that *key words in Section 10 are "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.*

11. However, the learned trial Judge did not quote

entire paragraph 8 which as observed earlier also records that **the object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between same parties in respect of the same matter in issue.**

Perusal of the impugned order shows that the learned trial Judge has not dealt with this aspect at all viz. whether two parallel suits are between the same parties or between parties under whom they or any one of them is claiming litigation under the same title. On this count, the impugned order deserves to be set aside directing the learned trial Judge to decide whether ingredients of Section 10 are fulfilled in the facts and circumstances of the present case. The Petition is disposed of in the following terms.

The impugned order is quashed and set aside.

- 1) The Chamber Summons No. 1970 of 2014 is restored to the file of the trial Court. The learned trial Judge will deal with the contention viz. whether conditions laid down in Section 10 are fulfilled in the present suit and pass order in accordance with the law.
- 2) All the contentions of the parties in that regard are expressly kept open.
- 3) The parties agree that they will appear before the trial Court on 29/07/2015 and for that purpose, no fresh notice be issued to them.

4) The learned trial Judge is requested to decide the Chamber Summons within one month from the date of the appearance of the parties. Rule is made absolute accordingly with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)