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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1315/2010 & C.M. No.18803/2010

VINOD KUMAR

..... Petitioner

Through Ms. Sonali Malhotra and Mr. Amit
Sanduja, Adv.

versus

BHUPINDER SINGH

..... Respondent

Through Daughter of the respondent.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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12.02.2016

This petition is directed against the impugned judgment dated 24.02.2010 vide which the application filed by the petitioner seeking a stay of the second suit on the premise of Section 10 of the CPC had been dismissed and rightly so.

Record shows that an eviction petition had been filed by the petitioner/Vinod Kumar in the year 2005. This was an eviction petition under Section 14 (1)(e) of the DRCA wherein Bhupinder Singh had been impleaded as a party. Submission was that the suit premises i.e. property bearing No. 308/11, Daya Basti, Shahzada Bagh, Old Rohtak Road, Delhi had been tenanted out to the tenant and the landlord being in bonafide need of the said premises and having no other reasonably suitable alternate accommodation available with him, the eviction petition be decreed filed. This was in the year 2005.

In the year 2006, a civil suit came to be filed by Bhupinder Kumar against Vinod Kumar. This was a suit for declaration and permanent injunction. In this suit, submission of the plaintiff was that he was the owner of the property and he was in possession of the same in his individual right. The registered sale deed dated 21.11.1997 through which the landlord Vinod Kumar has sought eviction is an invalid document. It should be declared null and void.

Before this Court, learned counsel for the petitioner submits that the matter in issue in the eviction petition and the suit for declaration are the same; both relate to the same property i.e. property bearing No. 308/11, Daya Basti, Shahzada Bagh, Old Rohtak Road, Delhi and the eviction petition having been filed prior in time, the suit for declaration filed by the respondent Bhupinder Singh one year later is liable to be stayed.

This Court is not in agreement with this submission of the learned counsel for the petitioner.

Section 10 of the CPC reads herein as under:-

“ 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 ¹[India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of ¹[India] established or continued by ²[the Central Government] ³[***] and having like jurisdiction, or before ⁴[the Supreme Court].*

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in ¹[India] from trying a suit founded on the same cause of action.”

It is only when the matter in issue in the earlier suit and the later suit are same; the parties are also the same that the Court is empowered to stay the second suit. The object of this provision is to ensure that the parties are not relegated to parallel proceedings which may lead to conflict of finding and a consequent conflict of judgment.

In the present case, the eviction petition is admittedly a petition under the provisions of the DRCA where the Additional Rent Controller (ARC) has power only to decide the status of the landlord-tenant. It is not necessary for him to go into the question of ownership as it is not a necessary ingredient of Section 14 (1)(e) of the DRCA. He only has to decide as to whether there is a bonafide need on the part of the landlord and he having no other reasonable alternate suitable accommodation, the landlord is entitled to a decree of eviction. At the cost of repetition, ownership may not be a matter of concern to the ARC. In the suit which has been filed by Bhupinder Kumar the prayer is to the effect that the sale deed dated 21.11.1997 in favour of the petitioner be declared null and void. The matters in issue are distinct and different.

In this background, the impugned order calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 12, 2016/A