

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 190 OF 2017**

Smt. Hirman Bai D/o Late Ramsundar, W/o Vishwanath Vishwakarma, Aged About 50 Years R/o Bajaridand, Police Station Khadgawan, Distt. Koriya (Chhattisgarh)

---- Petitioner**Versus**

1. Divisional Forest Officer Koriya Forest Division Baikunthpur, District Koriya (Chhattisgarh)
 2. Accounts Officer, (Mentioned as Accountant General in impugned order), Chhattisgarh Forest Department, Raipur, District Raipur (Chhattisgarh)
 3. Sarva Sadharan (as mentioned in the cause title of court below)
 4. Kaval Sai S/o Shobhit, Aged About 50 Years
 5. Ku. Babita D/o Kaval Sai, Aged About 20 Years
 6. Rajesh Kumar S/o Kaval Sai, Aged About 16 Years, through his father Kaval Sai,
- Respondent No.3 to 6 are Resident of Village Banjaridand, Police Station & Tahsil Khadgawan, District Koriya (Chhattisgarh)

---- Respondents

For Petitioner : Mr. Chandresh Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****09/03/2017**

Heard on admission.

1. This is a petition filed under Article 227 of the Constitution of India questioning the legality and propriety of the orders dated 26.9.2016 (Annexure P/1) and 3.11.2016 (Annexure P/2) passed by the Civil Judge, Class-I, Chirmiri, District Koriya and Second Additional District Judge, Manendragarh respectively

whereby an application filed by the petitioner under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') has been rejected.

2. Undisputed facts of the case are that the petitioner has initiated the proceedings as per the provisions prescribed under Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act, 1925') for grant of succession certificate with regard to the service dues of late Jagarniya as she is her sole legal heir. During its pendency, a civil suit bearing Civil Suit No.62-A of 2016 was instituted by the petitioner for declaration of title and injunction with regard to the immovable property left by said Jagarniya.

3. During the pendency of aforesaid proceedings, the petitioner has moved an application under Section 10 of the CPC, for staying the said succession proceedings till decision of the said civil suit.

4. Upon due consideration of the said application, the trial Court by its order impugned dated 26.9.2016 has rejected the said application on the ground that as per the provision of Section 10 of the CPC, only the suit could be stayed and not the proceeding initiated under the Act, 1925. The trial Court has observed further that since both the proceedings are different with each other, therefore, the application as filed is liable to be rejected. In consequence the said application filed under Section 10 of the CPC is rejected.

5. Being aggrieved, the petitioner has preferred a miscellaneous appeal under Order 43 Rule 1 of the CPC to the appellate Court, who in turn, observed that neither an appeal nor a miscellaneous appeal as such could be maintainable. Consequently, the appellate Court has rejected the said miscellaneous appeal by order dated 03/11/2016.

6. Being aggrieved with the aforesaid orders, the petitioner has filed this petition.

7. Mr. Chandresh Shrivastava, learned counsel for the petitioner has submitted that while rejecting the application filed under Section 10 of the CPC, the Courts below have committed an illegality, and therefore, the same deserves to be set aside and the proceedings initiated under Section 372 of the Act, 1925, are required to be stayed, pending decision of the said civil suit.

8. I have considered the entire record and perused the impugned orders.

9. Undisputedly, the petitioner has initiated a proceeding under Section 372 of the Act, 1925 for grant of succession certificate with regard to the service dues of late Jagarniya as she is the only heir of her and after initiation of said proceeding, the petitioner has instituted a civil suit being Civil Suit No.62-A of 2016 by claiming declaration of title and injunction with regard to the immovable property left by said Jagarniya.

10. The petitioner, by way of the said application, is praying for staying the succession proceeding, pending decision of the said civil suit. The question, therefore, involved in this case is whether Section 10 of the CPC is applicable to the proceedings initiated under Section 372 of the Act, 1925 for obtaining a succession certificate. In order to ascertain, as to, whether it, could be stayed, pending decision of the suit, by applying the provisions prescribed under Section 10 of the CPC, it is necessary to examine the said provision, which 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 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.”

11. A bare perusal of the said provision would show that its applicability could be only in relation to the trial of the suit and it cannot be applied for staying the proceedings of any nature, like the one initiated under the Act, 1925. Since the said proceedings cannot be equated to a suit, therefore, its proceedings cannot be stayed under the said provision.

12. The nature of both the aforesaid cases are not only different with each other but the jurisdiction of the Courts are also different, In such circumstances, the provision prescribed under Section 10 of the CPC would not be attracted, so as, to stay the proceedings initiated under the Act, 1925.

13. The proceedings contemplated by Section 10 of the CPC are in the nature of regular trial and would not include the proceedings which are summary in nature. The aforementioned question has been considered by the Supreme Court in the case of **Indian Bank v. Maharashtra State Co-operative Marketing Federation Ltd**¹. In that case a suit under Order 37 of the CPC was filed and the Supreme Court held that till the grant of leave to defend, the proceedings would remain summary and would not be covered by Section 10 of the CPC. However, after leave to defend is granted, the proceedings may be in nature of trial contemplated by Section 10. The observation of their Lordships in this regard read as under:-

"8. Therefore, the word "trial" in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to proceed with the trial of any suit in which the matter in issue is also directly or substantially in issue in a previously instituted suit. The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not

¹ AIR 1998 SC 1952

affect the jurisdiction of the Court to entrain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the Court as not a bar of the passing of interlocutory orders such an order for consolidation of the later suit with the earlier suit, or appointment of a Receiver or an injunction or attachment before judgment. The course of action which the Court has to follow according to Section 10 is not to proceed with the trial of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word "trial" in Section 10 is not used in its widest sense.

9. The provision contained in Section 10 is a general provision applicable to all categories of cases. The provision contained in Order 37 apply to certain classes of suits. One provides a bar against proceeding with the trial of a suit, the other provides for granting of quick relief. Both these provision have to be interpreted harmoniously so that the objects of both are not frustrated. This being the correct approach and as the question that has arisen for consideration in this appeal is whether the bar to proceed with the trial of subsequently instituted suit contained in Section 10 of the Code is applicable to a summary suit filed under Order 37 of the Code, the words "trial of any suit" will have to be construed in the context of the provisions of Order 37 of the Code. Rule 2 of Order 37 enables the plaintiff to institute a summary suit in certain cases. On such a suit being filed the defendant is required to be served with a copy of the plaint and summons in the prescribed form. Within 10 days of service the defendant has to enter an appearance. Within the prescribed time the defendant has to apply for leave to defend the suit and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just. If the defendant has not applied for leave to defend, or if such an application has been made and refused, the plaintiff becomes entitled to judgment forthwith. If the conditions on which leave was granted are not complied with by the defendant then also the plaintiff becomes entitled to judgment forthwith. Sub-rule (7) of Order 37 provides that save as provided by that order the procedure in summary suits shall be the same as the procedure in suits instituted in the ordinary manner. Thus in classes of suits where adopting summary procedure for deciding them is permissible the defendant has to file an appearance within 10 days of the service of summons and apply for leave to defend the suit. If the defendant does not enter his appearance as required or fails to obtain leave, the allegations in the plaint are deemed to be admitted and straightaway a decree can be passed in favour of the plaintiff. The stage of determination of the matter in issue will arise in a summary suit only after the defendant obtains leave. The trial would really begin only after leave is granted to the defendant. This clearly appears to be the scheme of summary procedure as provided by Order 37 of the Code.

10. Considering the objects of both the provisions i.e., Section 10 and Order 37 wider interpretation of the word "trial" is not called

for. We are of the opinion that the word "trial" in Section 10 in the context of a summary suit, cannot be interpreted to mean the entire proceedings starting with institution of the suit by lodging a plaint. In a summary suit the "trial" really begins after the Court or the Judge grants leave to the defendant to contest the suit. Therefore, the Court or the Judge dealing with the summary suit can proceed up to the stage of hearing the summons for judgment and passing the judgment in favour of the plaintiff if (a) the defendant has not applied for leave to defend or if such application has been made and refused or if (b) the defendant who is permitted to defend fails to comply with the conditions on which leave to defend is granted."

14. Language of Section 10 of the CPC itself suggests that it is referable to a suit instituted in civil Court and it cannot apply to proceedings of other nature instituted under the statute. It is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. In any case, the provision of Section 10 of the CPC would be attracted only when the decision of a suit operates as a *res judicata* in a subsequently instituted suit. The nature of both the matters are not only entirely different with each other but the jurisdiction of the Courts are also different. In such circumstances, the principles of *res judicata* would also not be attracted, so as to stay the proceedings initiated under the Act, 1925.

15. In the case of **Madhvi Amma Bhawani Amma v. Kunjikutty Pillai Meenakshi Pillai**², the aforementioned question was raised and the same has been answered by holding that the principle of *res judicata* would not be attracted by refereeing to Part X of the Act, 1925, Their Lordships have observed as under:-

14. So, this certificate merely affords full indemnity to the debtor for the payment he makes to the person holding such certificate. Thus when the debtor pays the debts or the securities as specified in the certificate, to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to any one else as it conclusively concludes his part of his

obligation and such payment is construed to be in good faith. This safeguards such debtor or person liable to pay that he may not be later dragged into any litigation which may arise subsequently inter se between the claimants. The use of words "good faith" in Section 381 reinforces that decision in these proceedings are not final. When statute recognises such payment to be made in good faith gives clear under current message that there may be in future better claimant but that would not effect the indemnification of the debtor. Thus we find accumulatively because of the grant of Succession Certificate being for a limited purpose, limited in its sphere, the declaration of title being prima facie, payment tendered is declared to have been made in good faith, leads to only one conclusion that any decision made therein cannot be treated to be final adjudication of the rights of the parties, except such declaration being final for the purpose of these proceedings. If that be so, the amount received by the holder of such certificate can yet be questioned and in subsequent proceeding it may hold it to belong to other claimant, including the contesting party.

15. This can be examined from another angle. The grant of Succession Certificate falls under Part-X of the aforesaid Act. Its range is between Section 370 to 390. It is significant to refer here Section 387. This declares the effect of decisions made under this Act and the liability of holder of such certificate. It lays down that any decision made under this Part (Part-X) upon any question of right between the parties shall not bar the trial of the same question in any suit or other proceedings between the same parties. It further records that nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debts or security to account therefor to the person lawfully entitled thereto. Section 387 is quoted hereunder:-

"Section 387 :

Effect of decisions under this Act, and liability of holder of certificate thereunder.- No decision under this part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceedings between the same parties, and nothing in this part shall be construed to affect the liability of any person who may receive the whole or any part of any debts or security or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto."

(Emphasis supplied)

16. On the basis of the precedent as well as the principle, it has become evident that the proceedings, in a regular suit and the proceedings which are summary in nature contemplated by Section 372 of the Act, 1925 are entirely different and the latter proceedings would not be covered by Section 10 of the

CPC. The object of issuance of a certificate and its effect is entirely different which would not result into deciding the issue finally between the parties.

17. Consequently, the orders impugned as passed by the Courts below deserve to be and are hereby affirmed. The writ petition, being devoid of merits, is therefore dismissed at admission stage itself.

No order as to cost(s).

Sd/-

(Sanjay Agrawal)
Judge