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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.78 of 2014**

Kishor Kumar S/o. Late S.C. Jain, aged about 39 years, R/o. Manendragarh Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (CG)

----Petitioner

Versus

1. Murarilal Tamrakar, S/o. Bathosao, aged about 55 years, R/o. Main Bartan Bhandar, Deviganj Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (CG)
2. Smt. Rupa Gupta, W/o.Nawal Kishor Prasad, D/o Shivram Prasad Gupta, aged about 47 years,
3. Smt.Kiran Gupta D/o. Late Shivram Prasad, aged about 44 years,
4. Smt.Asha Gupta, W/o Falendra Gupta, D/o Shivram Prasad Gupta, aged about 32 years,

All above Respondent No.2 to 4 are R/o. Deviganj Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (CG)

---- Respondents

For Petitioner	:	Mr.Manoj Paranjape, Advocate
For Respondents No.2 to 4	:	Mr.A.N.Bhakta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**30/6/2017**

1. Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner/plaintiff herein calls in question order dated 7.1.2014 by which the trial Court has stayed further proceedings of Civil Suit No.13B/2012 filed by

the petitioner/plaintiff till the adjudication of the suit bearing Civil Suit No.52A/2013 filed by respondents No.2 to 4/defendants herein.

2. The aforesaid challenge has been made on the following factual backdrop:-

2.1 The petitioner/plaintiff filed a suit bearing Civil Suit No.13B/2012 for arrears of rent and eviction of respondent No.1-Murarilal Tamaskar on the ground of bonafide need under Section 12 (1) (f) of the Chhattisgarh Accommodation Act, 1961 (hereinafter called as 'Act of 1961') stating inter-alia that he has purchased the land in question by registered sale deed dated 1.3.2008. During pendency of the suit, respondents No.2 to 4 filed an application for impleadment as party defendants. That application was allowed. Thereafter, respondents No.2 to 4 moved an application under Section 151 of the CPC stating inter-alia that they have filed the title suit before the jurisdictional civil Court bearing Civil Suit No.52A/2013, therefore, till that title suit is adjudicated, hearing of the present suit be deferred. The trial Court by its impugned order allowed the said application, against which, this writ petition under Article 227 of the Constitution of India has been filed.

3. Mr.Manoj Paranjape, learned counsel appearing for the petitioner, would submit that application under Section 151 of

the CPC is in the shape of Section 10 of the CPC and matter in issue in the present suit is not directly and substantially in issue in a suit instituted by respondents No.2 to 4, therefore, Section 151 of the CPC is not applicable as the present suit is for eviction and arrears of rent, whereas the suit filed by respondents No.2 to 4 is for declaration of title and permanent injunction and in the suit for eviction, question of title is not germane. He would further submit that bypassing Section 10 of the CPC, Section 151 of the CPC cannot be granted and previously instituted suit cannot be stayed, therefore, the impugned order be set aside.

4. Mr.A.N.Bhakta, learned counsel appearing for respondents No.2 to 4, would submit that the trial Court is absolutely justified in granting the application as the petitioner/plaintiff has claimed eviction on the ground of bonafide need under Section 12 (1) (f) of the Act of 1961 which involves determination of title and therefore, the writ petition deserves to be dismissed.
5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
6. It is not in dispute that the instant suit is for eviction and arrears of rent on the ground of bonafide need under Section

12 (1) (f) of the Act of 1961 and in that suit title of the plaintiff is not substantial, but is incidental for passing the decree for ejectment/eviction, whereas subsequently instituted suit is for declaration of title and permanent injunction by respondents No.2 to 4 and in that suit full fledged title of the plaintiff therein has to be determined.

7. The question for consideration would be whether under Section 151 of the CPC previously instituted suit can be stayed on the aforesaid factual score.
8. Section 10 of the CPC provides for stay of suit 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 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. In the matter of National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara¹ while highlighting the object of Section 10 of the CPC the Supreme Court has

¹ (2005) 2 SCC 256

held that Section 10 would apply only if there is identity of the matter in issue in both the suits. It was observed as under:-

“8. 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. In the aforesaid case (supra) the Supreme Court further held that Section 151 cannot be exercised to bypass Section 10 CPC. It was observed as under:-

“12. In the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal , it has been held that inherent jurisdiction of the Court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 CPC, but that jurisdiction cannot

be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. In the present case, as stated above, Section 10 CPC has no application and consequently, it was not open to the High Court to bye-pass Section 10 CPC by invoking Section 151 CPC.”

11. In the matter of Radha Devi Vs. Deep Narayan Mandal and others² the Supreme Court has held that question of title is not germane in the suit for eviction and and therefore, eviction suit cannot be stayed till determination of the title. It was observed as under:-

“4. After we have heard the learned counsel for the parties, we are of the view that the Bihar Rent Act is a special Act providing for speedy disposal of eviction suit on certain grounds enumerated therein. Under the said Act eviction suit is required to be tried under summary procedure provided under the Act. To succeed in the eviction suit under the Bihar Rent Act the landlord is required to prove contract of tenancy between her and the tenant and also the ground on which the eviction is sought. In such a suit the Rent Court is not required to go into the serious question of title otherwise the purpose of the Act would stand frustrated. In the aforesaid view of the matter, we are of the view that the courts below were not justified in staying the proceedings in the eviction suit.”

12. In the matter of Aspi Jal and another Vs. Khushroo Rustom Dadyburjor³, the Supreme Court while highlighting the scope and ambit of Section 10 of the CPC held as under:-

“9.....From a plain reading of the aforesaid provision, it is evident that where a suit is

² (2003) 11 SCC 759

³ (2013) 4 SCC 333

instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.”

13. In the matter of **Sheela and others Vs. Firm Prahlad Rai Prem Prakash**⁴, the Supreme Court has held that question of title is not relevant in ejectment suit. It was observed as under:-

“10.....Though of course, we may hasten to add, that the concept of ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a

⁴ (2002) 3 SCC 375

landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit.”

Their Lordships further held as under:-

“Thus the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the plaintiff.....”

14. Thus, Section 10 of the CPC would apply only if there is identity of the subject-matter in issue in both the suits. The question of title is not directly and substantially in issue, but is incidentally and collaterally in the suit for ejectment filed by the petitioner/plaintiff as the subsequent suit is for declaration of title, therefore, Section 10 of the CPC would not be attracted. The trial Court has committed illegality in staying the suit filed by the petitioner/plaintiff for ejectment on the ground of bonafide need under Section 12 (1) (f) of the Act of 1960 as the plaintiff is required to prove the title collaterally as the question of title is not substantial, but is incidental for passing the decree for ejectment. Therefore, previously instituted suit filed by the petitioner/plaintiff for ejectment/eviction cannot be stayed.

15. In the light of discussion held hereinabove, the writ petition is allowed and the impugned order is set aside. The trial Court is

directed to proceed with hearing of the suit filed by the petitioner/plaintiff and decide the same as early as possible preferably within a period of six months from the date of receipt of certified copy of this order. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-