

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.492 of 2019

1. Ghulam Ghaus S/o Late Anwar Ali Resident of Vill. and P.O.- Gorigama Dih, P.s.- Saraiya, Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
2. Md. Meraj S/o Late Anwar Ali Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya, Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
3. Ajihun Nisha D/o Late Anwar Ali Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya, Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
4. Shamima Khatoon W/o Md. Shaukat D/o Late Anwar Ali, Resident of Vill.- Karriji Pokar, P.o. Belsar, Ps. and Distt.- Vaishali

... .. Petitioners/defendants

Versus

1. Alihan Khatoon W/o Late Abdul Quadir W/o Late Abdul Quadir, Resident of Vill. and P.o.- Gorigama Dih, P.s.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
2. Abdul Quddus S/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
3. Abdul Sattar S/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
4. Md. Gafur S/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
5. Md. Suleman S/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
6. Md. Usman S/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
7. Amna Khatoon D/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama



- Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
8. Johra Khatoon D/o Late Abdul Quadir Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
9. Md. Kalam S/o Late Md. Sarfuddin Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur
10. Md. Rahmatullah S/o Late Abdul Aziz Resident of Vill. and P.O.- Gorigama Dih, P.S.- Saraiya Munsiffi and Sub-Division Muzaffarpur West, Distt.- Muzaffarpur

... .. Respondents/Plaintiffs

Appearance :

For the Petitioners : Mr.Sanjay Parasmani, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-08-2019

This application under Article 227 of the Constitution of India has been filed by the defendants/petitioners challenging the order dated 22.09.2018 passed in Title Suit No.114 of 1995 by the court of Munsif, West, Muzaffarpur by which their petition dated 30.08.2013 filed under Section 10 read with Section 151 of the Code of Civil Procedure (for short 'CPC') was rejected.

2. Learned counsel appearing for the petitioners submitted that while passing the impugned order dated 22.09.2018, the learned Munsif did not appreciate the facts and law involved in the case. By not staying Title Suit No. 114 of 1995, the learned Munsif has left the case to a stage where a



conflicting finding in two cases between the same parties in respect of the same property may be passed. The learned Munsif has failed to appreciate that a conflicting decision in respect of same property may affect the sanctity and spirit of judicial proceedings. According to him, the court below also failed to appreciate the ambit and scope of Section 151 of the CPC which was also invoked by the defendants by seeking relief in the matter.

3. Having heard learned counsel for the petitioners and perused the order impugned, I find that the facts of the case lies in a narrow compass.

4. In Title Suit No. 114 of 1995, the respondents had prayed for declaration by holding that sale deed no. 17039 dated 23.10.1992 purported to have been executed by the plaintiffs in favour of petitioners and another sale deed no. 17040, which is said to have been executed by the petitioners in favour of the respondents are illegal, fraudulent without consideration and inoperative from which vendees of the aforesaid documents did not acquire any right, title and interest in the property mentioned in the documents.

5. In Title Suit No. 146 of 1995, which was subsequently filed by the petitioners and decided earlier, the appeal of which is pending for declaration of title and recovery of



possession over Schedule-1 of the plaint on the basis of sale deed no. 17039 dated 23.10.1992 executed by the petitioners in favour of the respondents.

6. A submission was made on behalf of the petitioners before the court below that though Title Suit No. 146 of 1995 was filed subsequently, it was decided earlier against the respondents and an appeal against the judgment is pending . It was also pleaded that issues in both the suit are same. It was argued that for determining whether or not the matter is directly and substantially is the same in former and subsequent suit, the court below ought to have deferred the hearing of the earlier suit as the subsequent suit was already decided.

7. On behalf of respondents it was argued that the contentions of the petitioners are erroneous. Section 10 of the CPC speaks that subsequent suit should be stayed. There is no reliance to Section 10 of the CPC in the present suit as Title Suit No. 114 of 1995 was instituted earlier and Title Suit No. 146 of 1995 is a subsequent suit which was disposed of by the court of Munsif and appeal of which is pending. It was pleaded that the prayer made by the defendants is contrary to the provision of Section 10 of the CPC.



8. Having considered the rival submissions, the learned Munsif rejected the application filed by the petitioners for staying the suit observing as under :-

“... By perusal of the complaints of both the title suits it is apparent that plaintiff of this suit has sought relief of declaration with regard to sale deeds one executed by plaintiff in favour of defendants and other executed by defendants in favour of plaintiff whereas defendant of this case has sought relief of declaration only with respect to sale deed executed by plaintiff of this suit in T. S. 146/95 which means that any adjudication made in that suit will be only with regard to sale deed no.17039 and the relief with regard to sale deed no.17040 which has been also sought in present suit by plaintiffs in case of stay of this suit till disposal of Appeal will mean that the decision over sale deed dated 17040 will be kept in abeyance for unascertained period which will be abuse of process of law, Further by going through issues of both the suit it also appears that in T. S. 146/95 material issue is only with respect to the sale deed dated 23.10.92 executed by plaintiffs. Whereas the issue framed in present suit is with respect to declaration over sale deed no.17039 and 17040 both so issues are also not identical in both suits hence it can be said that the matter in dispute is not substantially same. It also appears that when subsequent suit was pending and no prayer for stay under Section 10



was made that means parties have waived their right under the statutory provision provided in this respect and in garb of inherent powers they can be allowed to get their right revived. Also there is one legal aspect which no one would deny i.e. an appeal is continuation of the same suit, so it means that subsequent suit is still pending for final adjudication in appeal so earlier suit-T.S. 114/1995 can't be stayed so as to nullify the provision expressly provided under Section 10 of the Code.

During course of argument various rulings are referred by the Ld. Counsel on behalf of defendant regarding applicability of Section 151 CPC if section 10 is not applicable AIR 1951 Calcutta 561 (C.N. 164) as relied by defendant's counsel will be not applicable in present case as the facts of this ruling relates to grant of letter of administration in respect of will wherein Probate Court has stayed the sale in title Execution Case which is quite different from this case wherein matters relate to Stay of earlier suit where subsequent suit is pending in appeal. The facts of AIR 1987 Gauhati 73 (Relied by Defendants) though different but last line of para 16 of this ruling itself states that if when there is special provision in c.p.c. for dealing with the contingencies of two such suits being instituted, recourse to inherent power under Section 151 C.P.C. is not justified..."



To compile the entire facts and to settle, I refer AIR 2005 SC 242(245) National Institute of M. H. & N. H. v. C. Parmeshwar wherein it is held that where S. 10 does not apply court would not stay proceedings under Section 151 as to nullify the provision of S.10” With the discussions above, where specific provision under Section 10 was available and was not resorted which shows that it was waiver court cannot take resort of the inherent powers under section 151 C.P.C. for the grant of relief of staying the suit and also keeping in abeyance the decision on sale deed no.17040. Hence it is ordered:

Petition dated 30.08.2013 filed on behalf of defendants to stay the suit is rejected by holding that this suit shall not be stayed.

Fix 29.10.2018 for further proceedings.”

9. Having seen the reasons assigned by the learned Munsif while passing the order impugned, I find that no jurisdictional error has been committed by the court below. He has clearly held that the issues in both the suits are not identical and, hence, it can be said that the matter in dispute is not substantially the same. The court below is also right in observing that when the subsequent suit was pending and no order for stay under Section 10 of the CPC was made, it would be presumed that the parties have waived their right under the statutory provisions provided in



this respect and in the garb of inherent powers, they cannot be allowed to get their right revived.

10. In that view of the matter, I see no merit in this application.

11. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.08.2019
Transmission Date	NA

