

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.259 OF 2019**

Smt. Ulashi Chandru Gomes alias
Mamta Mohandas Vadyenkar

... Petitioner

Versus

Egidio Braganca & Ors.

... Respondents

Shri P. Sawant and Shri N. Vernekar, Advocate for the Petitioner.

Shri Nigel Fernandes, Advocate for Respondent No.1.

Shri I. Agha and Shri K. Morajkar, Advocates for Respondents No.2,3 & 4.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 12th February 2020

ORAL ORDER :

The petitioner's predecessor filed Regular Civil Suit No.35/2008, before the Civil Judge, Senior Division, Panaji. He wanted the trial Court to cancel the sale deed the first defendant executed in favour of the defendant nos.5,7, and 9. He has sought the relief of injunction, too. The dispute concerns the land in Survey No.219/1. Pending that suit, the acquisition proceedings affected a part of the land. Then, there arose reference proceedings under Section 30 of the Land Acquisition Act.

2. In the Section 30 proceedings, there is a specific issue about the petitioner's entitlement as the tenant. In other words, the petitioner's tenancy is directly and substantially in issue in both the proceedings: Regular Civil Suit No.35/2008 and in Section 30 reference proceedings. So the petitioner has applied under Section 10 of CPC before the Reference

Court for having the reference proceedings stayed until the Civil Court decides the Regular Civil Suit No.35/2008. Through its order dated 04.01.2019, the trial Court dismissed the petitioner's application. Aggrieved, he has filed this Writ Petition.

3. Heard Shri P. Sawant, the learned counsel for the petitioner; Shri Nigel Fernandes, the learned counsel for respondent no.1; and Shri I. Agha, the learned counsel for the respondent nos.2,3 and 4.

4. Indeed, Section 10 does mandate that no court shall proceed with the trial of any suit if the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. And that previous suit must have been pending in the same or any other Court in India having jurisdiction to grant the relief claimed. This is the doctrine of *res subjudice*. The earlier suit disposed of, it operates as *res judicata* vis-à-vis the latter suit; on the other hand if it is pending, it attracts *res subjudice*. Conversely put, the fundamental test to determine whether a suit is hit by the rule of *res sub judice* is that the decision of the previous suit, if rendered, would act as *res judicata*.

5. Of many other considerations, Section 10 of CPC bars only the subsequent suit but not the previous one. Besides, it bars the trial, not the institution of the suit. Indeed, this Court in *Sennaji Kapuechand v Pannaji Devichand*¹ has ruled that the rule of *res sub judice* only bars the trial and

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does not bar the courts from adjudicating upon interlocutory orders, such as appointment of receiver, injunction, or attachment.

6. Further, this Court in *Mahavir Kallappa Dhulasawant v. Ld. District Collector of Kolhapur*² has held that Section 30 proceedings would not get affected by the doctrine of *re subjudice* as contained in Section 10 of CPC. Under an identical fact situation, *Mahavir Kallappa Dhulasawant* has held that Section 10 of the Code refers to stay of a "suit". Strictly construed, it does not envisage stay of the proceedings which do not qualify as suits, though instituted before a Civil Court. If the proceedings, the stay of which is sought, operate in a different sphere from the previously instituted suit, the recourse to Section 10 may not be justified.

7. To sum up, Section 10 of CPC, that is the rule of *res subjudice*, requires the following criteria: (a) both the proceedings must be suits; (b) in both the suits, the matter must be directly and substantially the same; (c) both the suits must be between the same parties or their representatives—that is, those claiming under them; (d) the parties in both the suits must be litigating under the same title; (e) the previous suit must have been pending; (f) the previous suit must have been pending before a competent court—that is, before a court competent to grant the relief sought in that suit; (g) only the trial in the latter suit gets stayed, not its institution; and (h) the bar under Section 10 does not apply to interlocutory orders which are essential to preserve the *lis* or protect the

² In WP No.3769 of 2019, decided on 14.10.2019 (MANU/MH/3650/2019)

interest of the parties *lis pendens*.

8. Here, as *Mahavir Kallappa Dhulasawant* has emphatically held, proceedings before a civil court under Section 30 of the Land Acquisition Act do not answer the description of being a suit. So the trial Court has rightly rejected the petitioner's petition under Section 10 of CPC.

9. That said, the petitioner's counsel has contended that the petitioner's father, who originally instituted the suit, has already been declared as a tenant by a competent authority and that enures to the successor's benefit as well. If that be so, it is entirely open for the petitioner to place relevant matter before the Reference Court and press his claim for share in the award of compensation. And that alleged declaration may, in fact, act as *res judicata* if it has been declared by a competent court involving the same parties. In the alternative, nothing stops the petitioner from taking advantage of the declaration before the Reference Court, subject to its relevance and acceptance.

10. Besides that, the learned counsel has also taken yet another plea. According to him, any dispute concerning tenancy must be decided by a competent authority under the statute: Mamlatdar. He wants this Court to allow him to apply to the Reference Court to refer the tenancy issue to the competent authority. In response, I may note that it is entirely open for the petitioner to raise the plea before the Reference Court if it is legally permissible.

Thus, after observing as above, I refuse to interfere with the impugned order but leave the petitioner to take all other pleas than *res subjudice* before the Reference Court. The parties will appear before the Reference Court on 11.03.2020 at 2.30 pm., to enable it to proceed with the matter.

DAMA SESHADRI NAIDU, J.

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