

19th August,
2021
(AK)
9

C.O. 3935 of 2018
IA No: CAN 1 of 2021

Jagacha High School
Vs.
Ratan Lal Ghosh, being dead,
represented by
Smt. Arati Ghosh and others

(via video conference)

Mr. Tanmoy Mukherjee

... For the Petitioner.

Mr. Amitava Chaudhuri
Mrs. Monoleena Choudhury
Mr. Dwaipayan Basu Mallick
Mr. N. Roy

...For the Opposite parties.

The present revisional application has been filed against an order whereby the petitioner's application for stay of Title Suit no. 17 of 2014 was refused.

It is submitted by learned counsel for the petitioners that the aforementioned suit was filed by the present opposite parties for declaration of their ownership and title, for permanent injunction and consequential reliefs in respect of 44 Sataks of land comprised in R.S. Dag no.76.

The petitioners, it is relevant to mention, previously filed a suit, bearing Title Suit No.171 of 2013, in which a counter-claim was filed by the opposite parties, whereby the opposite parties claimed that they were the owners of

27 Sataks out of the same Dag, that is, R.S. Dag no.76, out of the 44 Decimals comprised in Dag No.76.

On the plinth of such averment in the counter-claim, the opposite parties have claimed a decree for declaration that they are the owners of the entire suit property as described in the schedule of the counter-claim, that is, 44 Decimals of land and for permanent injunction against the defendant restraining them and their men and agents from disturbing the peaceful possession of the plaintiffs/opposite parties.

It is, thus, contended that the opposite parties having staked a claim to title in respect of the same property but restricting their ownership to 27 Sataks instead of 44 Sataks in the counter-claim, the subject matters substantially in issue in both the suits are the same.

In the event, the issues raised in the first suit and the counter-claim are decided finally, those will operate as *res judicata* in the subsequent suit filed by the opposite parties bearing Title Suit No. 17 of 2014. It is, thus, contended that the trial court acted without jurisdiction in refusing to stay the subsequent suit, that is, Title Suit No. 17 of 2014.

Learned counsel appearing for the opposite parties, by citing a judgment reported at (2013) 4 Supreme Court Cases 333 (*Aspi Jal and another Vs. Khushroo Rustom Dadyburjor*) , argues that, for an order of stay to be

passed under Section 10 of the Code of Civil Procedure, the entire subject matters of the two suits have to be the same.

By placing particular reliance on paragraph 12 of the cited report, it is pointed out that the Supreme Court specifically laid down that the said provision would not apply where a few of the matters in issue are common, but only when the entire subject-matter in controversy in both are the same.

Upon a perusal of the respective complaints of the two suits and the counter-claim filed by the opposite parties in the prior suit filed by the petitioner, it is evident that the claim of the opposite parties is in respect of 44 Decimals in R.S. Dag No. 76, as enumerated in the respective schedules of the counter-claim of the opposite parties in Title Suit No. 171 of 2013 and the complaint filed by the opposite parties in Title Suit No.17 of 2014.

Although it has been contended on behalf of the opposite parties that the counter-claim arises from a subsequent cause of action to that of Title Suit No. 17 of 2014 and the subject-matters of challenge are different, inasmuch as an encroachment of the petitioner in respect of a portion of the 44 Decimals of land has been alleged in the counter-claim, whereas title in respect of the entire 44 Decimals is claimed in Title Suit No. 17 of 2014, it is patent from the averments, made in the counter-claim and the complaint of the opposite parties' subsequent suit,

that the cardinal question which is substantially in issue in both the suits is whether the opposite parties or the petitioner have/has title in respect of the suit property.

Since the suit property, as described in the schedule of the counter-claim as well as that of Title Suit No. 17 of 2014 are identical, pertaining to 44 Sataks of R.S. Dag No.76, in the event the first suit and/or the counter-claim made therein are decided first, the decision therein shall evidently operate as *res judicata* in the subsequent suit, that is, Title Suit No. 17 of 2014.

Although learned counsel for the opposite parties sought to make out a case that the counter-claim was in respect of merely an encroached portion out of the 44 decimals, which is different from the subject-matter of the opposite parties' subsequent suit as well as the previous suit of the petitioner, it is clear from the pleadings and reliefs of both the suits that the opposite parties have claimed title in respect of 44 Decimals out of Dag No.76, which is the "suit property" as mentioned in the schedules of both the opposite parties' counter-claim and their suit.

That apart, the first relief claimed in the counter-claim as well as the second relief claimed therein are exactly identical with those claimed in the opposite parties' suit, bearing Title Suit No. 17 of 2014, being a declaration that the opposite parties are the owners and in possession of the suit property and that the opposite

parties have right, title and interest in the same property respectively, and the consequential reliefs of permanent injunction, although of a subtly different nature in the counter-claim and the subsequent suit, the subject-matter of challenge and the issues relevant for decision in the first suit along with the counter-claim.

In such view of the matter, Section 10 of the Code of Civil Procedure is squarely applicable in the present case.

In the event the first suit and/or the counter-claim are decided prior to the second suit, the decision rendered in the former would operate as *res judicata* in respect of the latter and vice versa. Hence, the court below refused to exercise the jurisdiction vested in it by law in rejecting the application under Section 10 of the Code of Civil Procedure filed by the petitioner in the subsequent suit of the opposite parties, that is, Title Suit No. 17 of 2014.

Accordingly, C.O. 3935 of 2018 is allowed on contest, thereby setting aside the order dated August 21, 2018 passed by the Civil Judge (Junior Division), Sixth Court at Howrah in Title Suit No. 17 of 2014 and granting stay of all further proceedings in Title Suit No. 17 of 2014 pending in the Sixth Court, Civil Judge (Junior Division) at Howrah till disposal of Title Suit No. 171 of 2013 and the counter-claim filed therein by the opposite parties.

CAN 1 of 2021 is disposed of accordingly, with liberty to the opposite parties to approach the trial court in connection with Title Suit No. 171 of 2013 or the counter-claim filed by the opposite parties in the said suit, praying for the same relief as prayed in CAN 1 of 2021.

If such a prayer is made, the trial court shall adjudicate the same on its own merits without being influenced in any manner by any of the observations made in this order.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)