

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

01.03.2022
Item No.11
Court No. 01
Saswata
(AR)(C)

C.O. 102 of 2021

**Sunil Kumar Singal @ Singhal & Ors.
Versus
Bishnu Roy @ Das @ Bishu**

Mr. Sudipto Mazumder
Mr. Rajesh Kumar Agarwal
Miss. Aayushi Agarwal
...for the petitioners

Mr. Sanat Kumar Biswas
... for the opposite party

This revisional application is directed against the portion of an order no. 7 dated 04/10/2021 passed by the Learned Civil Judge (Junior Division), 1st Court at Jalpaiguri in Title Suit no. 196 of 2021 by which an application under Section 10 of the Code of Civil Procedure filed by the petitioner stood dismissed.

The impugned order has two limbs. The first limb pertains to the disposal of an application under Section 10 of the Code and the other limb relates to the disposal of an application for temporary injunction and an application under Order XXXIX Rule 4 of the Code. Since the latter portion of the order is amenable to be challenged by way of an appeal under Order XLIII Rule 1 (r) of the Code, this Court refrains from making any observations

thereupon as the petitioner has already approached the First Appellate Court by filing a substantive appeal. The findings made herein shall be restricted to the first limb of the order more particularly, for the disposal of an application under Section 10 of the Code.

It is not in dispute that the petitioner approached the Court, i.e., the Civil Judge (Junior Division), 1st Court at Jalpaiguri by filing Title Suit no. 193 of 2021 seeking a decree for declaration of title and confirmation of possession as well as permanent injunction against the defendant/opposite party from entering into the suit property and invading the rights as well as the possession whereof. The defendant/opposite party filed a suit being Title Suit no. 196 of 2021 in the same Court seeking a decree for permanent injunction against the petitioners from entering into the suit land. Both the complaints contain the schedule over which the parties have laid their claim. Naturally, the petitioner took out an application for stay of the latter suit in view of provisions contained in Section 10 of the Code, until the earlier suit is decided. The Trial Court proceeded to dismiss the application upon looking into the schedule of the property appended in both the complaints and held that there is dissimilarity between the properties described therein and, therefore, Section 10 of the Code cannot be made applicable.

Before I embark the journey to determine the legality and sustainability of the impugned order, it would be apposite to quote the provision contained in Section 10 of the Code which runs thus:

“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 litigation under the same title where such suit is pending in the same or any other Court in India have 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.”

On the meticulous reading of the language employed in the aforesaid Section, it leaves no ambiguity in my mind that the aforesaid provision can be activated where the issue in an earlier instituted suit is directly and substantially an issue in a latter suit.

Jurisprudentially, what is *sine quo non* of the applicability of the aforesaid Section is whether the decision of the earlier suit would operate as *res judicata* in a subsequent suit. In order to attract the principles of *res judicata*, it is not the relief which is material but the issue involved in both the suits. If the issue pertains to a dispute which is also involved

in an another suit and if the same is between the same parties, it would operate as *res judicata* against them, provided it is finally decided by the Court of competent jurisdiction.

The provisions contained in Section 10 of the Code can be defined in the following parts.

Firstly, the issue in the previously instituted suit must directly and substantially be the issue in the latter suit.

Secondly, both the suits must be against the same parties or the persons litigating through them.

Thirdly, the Court is competent to grant reliefs in both the suits.

Fourthly, both the proceedings must be before the same Court.

Such being the basic ingredients for Section 10 of the Code, unless the Court returned its finds thereupon, it would not be proper on their part to proceed in rejecting the said application simplicitor banking upon the schedule of both the properties and finding a minor difference here and there for the purpose of dismissal thereof.

We are not unmindful of the proposition of law that mere existence of one issue when the other larger issues are involved in this suit, does not *ipso facto* come within the ambit of Section 10 of the Code. The law is somewhat settled that even if the Court passes an order under Section 10 of the Code, it does not

impinge upon the every steps to be taken in the said suits but what is important is the stay of the trial of the suit; even an interlocutory application may be entertained after an order is passed under Section 10 of the Code in an earlier instituted suit which is manifest from the language employed therein.

The expression “*no Court shall proceed with the trial of any suit*” has to be understood in a pragmatic manner and the word “trial” has to be given a restrictive meaning. Normally trial means from the date of the presentation of the plaint till the decree is drawn up. All such steps are considered to be a trial but for the purpose of Section 10 of the Code, it would be restricted to a stage when the parties, after completing their pleadings and the discovery as well as the framing of the issue, come in witness box to adduce evidence. There is no quarrel to the proposition that even if the provisions contained in Section 10 of the Code do not satisfy the ingredients in a given case, there is no fetter on the part of the Court in passing an order in exercise of the inherent powers enshrined under Section 151 of the Code directing consolidation of both the suits. There is no specific provision provided for consolidation or the analogous hearing of more than one suit, as such power is eminently present in Section 151 of the Code.

Even, if the Trial Court found some disparity in

the schedule appended to both the complaints yet after meticulous examination thereof, this Court finds some common properties and in fact, the pleadings of both the complaints leave no doubt that both the parties asserted their rights therein. Since rival titles are claimed and identity appears to be on one of the issues, this Court finds that in such a scenario, it would be prudent to consolidate the suits so that such ambiguity can be ruled out and there would be an avoidance of the repetitive evidence to be adduced by the respective parties.

The portion of the order impugned in the revisional application is set aside.

Both the suits being Title Suit no. 193 of 2021 and Title Suit no. 196 of 2021 shall proceed analogously as they are pending before the same Court.

The learned Judge in the Trial Court is requested to take immediate steps for consolidation of both the suits and endeavour must be shown to dispose of the same, as expeditiously as possible.

The revisional application being C.O. 102 of 2021 is, accordingly, disposed of.

(Harish Tandon, J.)