

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.421 of 2022

1. Manoj Singh @ Manoj Yadav, son of late Sidhnath Singh, Resident of Village- Chakrahansi, P.O.-Pandey Patti, P.S.- Buxar Muffasil, District- Buxar (Bihar) and at present residing at Sainik Colony, Near ITI College, Buxar, District- Buxar (Bihar) Pin Code- 802101.
3. Vimal Kejriwal S/O Sri. Radhey Shyam Kejriwal Resident of Kotwali Chauk, P.O.- Buxar, P.S. - Buxar Town, District- Buxar (Bihar) Pin Code- 802101.

... .. Petitioners

Versus

1. Dina Nath Pandey, S/O Late Banarasi Pandey Resident of Village - Pandey Patti, P.O.- Pandey Patti, P.S.- Buxar Muffasil, District- Buxar (Bihar).
2. Manish Kejriwal S/O Sri. Radhe Shyam Kejriwal Resident of Kotwali Chauk, P.S.- Buxar Town, District- Buxar Pin Code- 802101.

... .. Respondents

Appearance :

For the Petitioners : Mr. Ashok Kumar, Advocate
For the Respondents : Mr. Parijat Saurav, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 11-09-2023 This application has been filed for quashing of the order dated 26.04.2022 passed by learned Sub Judge, I, Buxar in Title Suit No.397 of 2019, by which the learned Sub Judge rejected the petition dated 25.01.2022 filed by the petitioners-original defendants under Section 10 read with Section 151 of the Code of Civil Procedure for stay of further proceeding of the suit.

2. The short facts of this case are that the disputed land belonged to one Govind Kejriwal, who had two



sons namely, Radhey Shayam Kejriwal and Mahabir Prasad Kejriwal. Mahabir Prasad Kejriwal had sold the land in question in favour of one Kumud Kishore Pankaj in the year 1991. The respondent no.1 had purchased the said land from Kumud Kishore Pankaj in the year 1992 and thereafter his name was mutated in the revenue records. The petitioner no.2 and his brothers filed Title Suit No.21 of 1992 against Mahavir Prasad Kejriwal and others for declaration of their title over the land in question and other properties on the basis of registered gift deed. In the said suit, the respondent no.1 was not made a party. The Court below by a judgment and order dated 20.05.1996 dismissed the Title Suit No.21 of 1992. Against the said judgment and order, the petitioner no.2 and his brother filed First Appeal No.370 of 1996, which stood dismissed for default for non-compliance of order dated 18.07.2003. In the year, 2012, a restoration application has been filed, which was allowed on 27.09.2012 and accordingly, the First Appeal No.370 of 1996 was restored. Thereafter, the petitioner no.2 and his brother (respondent no.2) executed a sale deed dated 28.12.2012 in favour of the petitioner no.1 for the suit land which was also the part of Title Suit No. 21 of 1992. The respondent no.1 filed Title Suit No.397 of 2019 challenging the aforesaid sale deed



dated 28.12.2012 executed by the petitioner no.2 and his brother (respondent no.2). In the Title Suit No. 397 of 2019, the petitioners-original defendants filed a petition dated 25.01.2022 under Section 10 read with Section 151 of the Code of Civil Procedure for stay of further proceeding of the aforesaid Title Suit, which has been rejected by the Court below by impugned order dated 26.04.2022.

3. Learned counsel for the petitioners submits that the application under Section 10 read with Section 151 of the Code of Civil Procedure could not have been rejected as in the Title Suit No.397 of 2019 and in the First Appeal No.370 of 1996, which is pending before this Court, the parties and the subject matter in both the cases also common.

4. Learned counsel for the respondent no.1 submits that though the parties are common in both cases but the relief in both cases are different and therefore, the second case i.e. Title Suit No. 397 of 2019 cannot be stayed. In support of this submission, he has relied upon a decision rendered in the case of **Laxman Ray @ Laxman Yadav vs. Ram Bilash Yadav** reported in **2022 (2) BLJ 451**.

5. I have heard learned counsel for the parties. Section 10 of the Code of Civil Procedure reads as follows:-

“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.”

6. In a similar case, a co-ordinate Bench of this Court in the case of ***Laxman Ray @ Laxman Yadav vs. Ram Bilash Yadav (supra)*** has held in paragraph nos.6 to 8 as under:-

“6. The learned counsel for the respondent has relied upon the decision of the co-ordinate Bench of this Court reported in (i) (2013) 3 PLJR 782, (Rajesh Kumar Choudhary v. Pradeep Kumar Choudhary) and (ii) (2016) 4 PLJR 507 (Sampatti Devi v. Lalita Devi). In the case of Rajesh Kumar Choudhary (supra), after relying upon the decision of Hon'ble Supreme Court in (2005) 2 SCC 256, (National Institute of Mental Health & Neuro Sciences v. C. Parameshwara), the co-ordinate Bench has held as follows:



“8. The principle underlying Section 10 of the Code of Civil Procedure is based on the well recognized doctrine of res-sub judice object of which 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 same relief but intends to protect a person from multiplicity of proceedings and to avoid conflict of decisions. The test for applicability of Section 10 has been clearly laid down by Supreme Court in the case reported in (2005) 2 SCC 256 (National Institute of Mental Health & Neuro Sciences v. C. Parameshwara), relevant portion of paragraph 8 of which reads as follows:—

“8 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”.

9. As per the said judgment 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. The Supreme Court held that Section 10 will apply only in such cases where the whole of the subject matter in both the suits is identical, while interpreting “the matter in issue is directly and substantially in issue.”

7. Similarly, in the case of Sampatti Devi (supra), the co-ordinate Bench has held as follows:—

“3. 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, the whole of the subject matter in both the proceedings is identical. In the present case, admittedly this is not the fact”.

8. *In the present case, as discussed above, it is an admitted fact that although the subject matter of Title Suit No. 141 of 2009 is also a subject matter of Partition Suit No. 24 of 2005, but the entire properties in dispute in both the suits cannot be termed as identical, as such, it cannot be said that the matter in issue was directly and substantially involved in both the cases. In my view, the learned court below has rightly refused to stay the proceedings of Title Suit No. 141 of 2009.”*

7. On going through the provision of Section 10 of the Code of Civil Procedure and also the aforesaid judgment of this Court, it appears that for staying a suit apart from the parties being the same the subject matter in both the suits should also be identical and the subject matter should be directly and substantially the same in both the suits. In the present case, the subject matter in both the cases i.e. First Appeal No. 370 of 1997 (arising out of Title Suit No.21 of 1992) and Title Suit No. 397 of 2019 are not directly and substantially the same and therefore, the second case i.e. Title Suit No. 397 of 2019 cannot be stayed. I am of the considered view that there is no illegality



and irregularity in the impugned order by which the learned Court below has refused to stay the further proceeding of Title Suit No.397 of 2019.

8. In view of the aforesaid, this application is dismissed.

(Sandeep Kumar, J)

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