

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15606 of 2010

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Rajendra Tanto S/O Gaya Tanto R/O Vill Garhani, P.S.Charpokhari, Distt-Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Anchal Adhikari Garhani, P.S.Charpokhari, Distt-Bhojpur
3. Sakhichand Sah S/O Ruplal Sah R/O Vill Garhani, P.S.Charpokhari, Distt-Bhojpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rewti Kant Raman, Advocate
For the Respondent/s : Mr.Gp6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 17-02-2023

1. The present writ petition has been filed for quashing the order dated 29.04.2010, passed by the learned Munsif-1, Ara, in Eviction Suit No.2 of 2009, whereby and whereunder the petition filed by the opposite party-petitioner herein on 30.03.2010, under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), for stay of the proceedings of the aforesaid case, has been held to be not maintainable.



2. The brief facts of the case, according to the petitioner, are that Revisional Survey Plot No.946, situated in village-Garhani, Charpokhari, District-Bhojpur, belonged to one Lakhan Das, who died leaving his widow and daughter, namely, Monako Devi, from whom the private respondent no.3, namely, Sakhi Chand Sah is stated to have purchased the disputed land in question. It is also submitted that since Lakhan Das had no male issue and had become old as also was not able to look after the affairs of his family, he had kept the petitioner along with him to look after the cultivation work and the affairs of his family and the petitioner was, thereafter, looking after the entire affairs of the said late Lakhan Das, and in the process thereof, the said Lakhan Das had permitted the petitioner to construct a house over the disputed land and live in the same along with his family members. It is submitted that after the death of the said late Lakhan Das, his widow and daughter had left village, whereafter they had not returned back to the village, hence the petitioner



had filed an application before the Circle Officer, Charpokhari to issue Basgit Parcha in his favour, whereafter the Circle Officer, Charpokhari had issued Basgit Parcha in favour of the petitioner by an order dated 22.03.1989.

3. The private respondent no.3 was having greedy eyes over the house of the petitioner, hence he had set up a stranger lady in the name of the family member of the said late Lakhan Das and got a sale deed executed in his favour in respect of the disputed land in question and it was stated that the said stranger lady is daughter of the deceased Lakhan Das, namely, Monako Devi. In the meantime, the petitioner had filed an application before the Consolidation Officer, Charpokhari to record his name qua the disputed plot in question on the ground that he had been issued Basgit Parcha by the Circle Officer, Charpokhari, as also he has been in possession over the said land since time immemorial. The said case filed by the petitioner was numbered as Objection Case No.36 of 1989-90. The private



respondent had also filed an application before the Consolidation Officer, Charpokhari *inter alia* praying therein to record his name qua the disputed land and house in question before the Consolidation Officer, Charpokhari, which was numbered as Objection Case No.35 of 1989-90. The Consolidation Officer, Charpokhari had then amalgamated both the aforesaid cases by an order dated 03.10.1989 and by an order dated 22.12.1989 had allowed Objection Case No.36 of 1989-90, filed by the petitioner, while the other Objection Case No.35 of 1989-90 was rejected, whereafter, the private respondent had filed an appeal bearing Consolidation Appeal No.39 of 1989-90 and 40 of 1989-90 before the Deputy Director Consolidation, Bhojpur at Ara, which was then transferred to the Assistant Director Consolidation, Bhojpur at Ara and the Assistant Director Consolidation, Bhojpur at Ara, by an order dated 11.03.1992, had dismissed both the appeals. Thereafter, the private respondent had filed Consolidation Revision No.389 of 1992, before the



Director Consolidation, Bihar Patna, which was transferred to the Court of Principal, Consolidation Training Institute, Patna, however, the same stood dismissed for default by an order dated 04.02.1994.

4. In the meantime, the private respondent no.3 had filed a writ petition bearing CWJC No.8253 of 1989 before this Court for quashing the order dated 22.03.1989, passed by the Circle Officer, Charpokhari in Case No.2 of 1988-89, which has also stood dismissed for default, by an order dated 12.01.2000. The private respondent no.3 had also filed an appeal on 16.08.1993, challenging the order dated 22.03.1989, whereby Basgit Parcha had been issued to the petitioner herein, without filing any petition for condonation of delay, nonetheless the learned Collector without considering the issue of maintainability of the appeal had issued notice to the petitioner, whereafter the petitioner had entered his appearance and raised the issue of maintainability of the appeal, however, the said appeal was



allowed by the learned Collector by an order dated 23.06.2004, which was then challenged by the petitioner before this Court by filing a writ petition bearing CWJC No.10430 of 2004 in which an order of stay was granted, by an order dated 05.04.2005. Nonetheless, the private respondent no.3 then filed eviction suit bearing Eviction Suit No.2 of 2004, before the learned Munsif-1, Ara in which the petitioner had then entered his appearance and filed a written statement. It is the further case of the petitioner that the petitioner had thereafter, filed a petition on 30.03.2010 in the aforesaid Eviction Suit No.2 of 2009 *inter alia* praying therein to stay the further proceedings of the said case since the Hon'ble High Court had granted stay in CWJC No.10430 of 2004, however, the said petition has been rejected by the learned Court of Munsif-1, Ara by the impugned order dated 29.04.2010.

5. The learned counsel for the petitioner has submitted that the petition of the petitioner filed under Section 10 of the CPC has erroneously been rejected by the learned Court of Munsif-1,



Ara, by the impugned order dated 29.04.2010, inasmuch as the order dated 23.06.2004, passed by the learned Collector, Bhojpur at Ara in Revenue Misc. Case No.11 of 1993-94, allowing the appeal filed by the private respondent and setting aside the order dated 22.03.1989, passed by the Circle Officer, Charpokhari granting Basgit Parcha to the petitioner herein has been stayed by the Hon'ble High Court by an order dated 05.04.2005, passed in CWJC No.10430 of 2004.

6. I have heard the learned counsel for the parties and perused the materials on record.

7. At this stage, it would be relevant to reproduce Section 10 of the CPC:-

“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 1[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits



*of 1[India] established or continued by 2[the Central Government 3***.] and having like jurisdiction, or before 4[the Supreme Court].*

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in 1[India] from trying a suit founded on the same cause of action.”

8. A bare perusal of the aforesaid provision of law, as contained in Section 10 of the CPC would show that first of all, the language suggests that Section 10 is referable to a suit instituted in Civil Court and it cannot apply to the proceedings of other nature instituted under any other statute and vice versa. The basic principle underlying Section 10 of the CPC is to prevent courts of competent jurisdiction from simultaneously trying two parallel suits in respect of the same subject matter, etc. As far as the present case is concerned, this Court finds that the aforesaid writ petition, i.e. CWJC No.10430 of 2004 has already stood disposed off by a co-ordinate Bench of this Court by an order dated 18.06.2013 and the aforesaid order dated



23.06.2004 has been set aside and the matter has been remanded back to the District Collector, Bhojpur at Ara for fresh decision, after giving an opportunity of hearing to all concerned, however, the petitioner is unable to inform this Court as to what has happened in the aforesaid Revenue Misc. Case No.11 of 1993-94, pending before the learned Court of Collector, Bhojpur at Ara. Nonetheless, this Court finds that the matter under consideration in the aforesaid Revenue Case No.11 of 1993-94 is regarding the legality of the Basgit Parcha issued by the Circle Officer, Charpokhari in favour of the petitioner, while the aforesaid Eviction Suit No.02 of 2009 is a suit filed by the private respondent no.3 for eviction of the petitioner from the suit premises, apparently on the ground that he is having right, title and interest over the land/premises in question by virtue of having purchased the same by way of a sale deed from the daughter of Late Lakhan Das, meaning thereby that the matter in issue in both the cases are different. Moreover, this Court finds that the



learned Court of Munsif-1 Ara and that of the Collector, Bhojpur at Ara are not courts of concurrent jurisdiction and the proceedings pending before the learned Collector, Bhojpur at Ara is obviously not by way of a suit instituted in any Civil Court, hence pendency of a case before the learned Collector, Bhojpur at Ara would not operate as a stay to the trial of the aforesaid Eviction Suit No.02 of 2009 by the learned Munsif-1, Ara, thus this Court finds that the petition filed by the petitioner on 30.03.2010 under Section 10 of the CPC is devoid of any merit, hence has been rightly rejected by the impugned order dated 29.04.2010 by the learned Court of Munsif-1, Ara.

9. In this connection, it would be relevant to refer to a judgment rendered by the Hon'ble Supreme Court in the case of **National Institute of Mental Health & Neuro Sciences v. C. Parameshwara**, reported in **(2005) 2 SCC 256**, paragraph nos. 8 to 12 whereof are reproduced hereinbelow:-

"8. The object underlying Section 10



is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. 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



contradistinction 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 the subject-matter in both the proceedings is identical.

9. *In the present case, the appellant had initiated the disciplinary proceedings against the respondent herein on charges of misappropriation of drugs. In the said disciplinary proceedings, the respondent was found guilty of alleged misappropriation of drugs. On the basis of the findings arrived at in the disciplinary enquiry, the respondent herein was removed. The extent of the loss suffered by the appellant, as found in the disciplinary enquiry, was Rs 1,79,668.46. Being aggrieved by the order of dismissal, the respondent moved the Labour Court. On 29-10-2001, the Labour Court passed an award setting aside the order of removal dated 12-4-1993. Being aggrieved, the appellant instituted Writ Petition No. 24348 of 2002. The appellant has also instituted Civil Suit No. 1732 of 1995 for recovery of the loss suffered by it to the tune of Rs 1,79,668.46 with interest.*



Thus, as can be seen from the above facts, both the proceedings operated in different spheres. The subject-matter of the two proceedings is entirely distinct and different. The cause of action of the two proceedings is distinct and different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said Writ Petition No. 24348 of 2002, the management has challenged the award of the Labour Court granting reinstatement of the respondent.

10. *As stated above, Section 10 CPC is referable to a suit instituted in a civil court. The proceedings before the Labour Court cannot be equated with the proceedings before a civil court. They are not the courts of concurrent jurisdiction. In the circumstances, Section 10 CPC has no application to the facts of this case.*

11. *In the impugned judgment, the High Court has observed that since Writ Petition No. 24348 of 2002 filed by the appellant against the award of the Labour Court was pending in the High Court and since the High Court was superior to the civil court, it was desirable to stay the passing of the decree by the civil court. At this stage, it*



may be mentioned that the respondent applied for stay of the trial pending in the City Civil Court, Bangalore under Section 10 read with Section 151 CPC. Since the scope of the writ petition filed by the management was entirely distinct and separate from the suit instituted by the management in the civil court, we are of the view, that, the High Court had erred in directing the trial court not to proceed with the drawing up of the decree.

12. *In the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal [AIR 1962 SC 527 : 1962 Supp (1) SCR 450] it has been held that inherent jurisdiction of the court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 CPC, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. In the present case, as stated above, Section 10 CPC has no application and consequently, it was not open to the High Court to bypass Section 10 CPC by invoking Section 151 CPC."*

10. Having regard to the facts and



circumstances of the case and for the reasons mentioned, hereinabove, I do not find any merit in the present petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

Kanchan/-

AFR/NAFR	AFR
CAV DATE	NA
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