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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision :14.08.2023.

+ CS(OS) 487/2022, I.A. 13002/2022 (Order XXXIX Rule 1&2, CPC)
& I.A. 18472/2022 (Order VI Rule 17, CPC)

SOM NATH KALRA Plaintiff

Through: Mr.Praveen Suri, Adv.

versus

DEEPA KALRA & ORS. Defendants

Through: Mr.Chirag Jamwal & Mr.Roshan
Kumar, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present suit has been preferred by the plaintiff seeking partition of property bearing no.2230, Shanker Gali, Sita Ram Bazar, Delhi-110006 (hereinafter referred to as the 'suit property').
2. Vide order dated 22.08.2022, this Court after, taking into account the defendants' plea that a suit being CS DJ No.428/2022, filed by the defendant no.1 herein, seeking partition of the very same property was already pending adjudication before the Court of the learned Additional District Judge (ADJ-06), District(Central), Tis Hazari Courts, Delhi, had granted time to the learned counsel for the plaintiff to make submissions as to how the present suit would be maintainable.
3. Today, he submits that since the value of the share, which the plaintiff is claiming in the suit property is much higher than what is being alleged by the defendants in the partition suit preferred by them before the learned Trial



Court, the plaintiff's claim for his share in the suit property would be beyond the pecuniary jurisdiction of the learned Trial Court. He submits that it is only this Court that would have the pecuniary jurisdiction to entertain the claim of the plaintiff and therefore, contends that the plaintiff was justified in approaching this Court. By placing reliance on the decision of the Apex Court in *Des Raj & Ors. v. Bhagat Ram (Dead) By LRs. & Ors. (2007) 9 SCC 641*, he submits that there is no bar against the institution of two different suits seeking partition of the same property and therefore, prays that summons be issued in the suit.

4. Having considered the pleas of the parties and perused the record, I find that the plaintiff does not deny that a suit being CS DJ No.428/2022 preferred by the defendant no.1 seeking partition of the very same property is pending consideration before the Court of the learned ADJ-06, District(Central), Tis Hazari Courts, Delhi. It is also admitted by the plaintiff that in the aforesaid suit pending before the learned Trial Court, he is a party defendant and has duly claimed his share in the property before the said Court. Furthermore, vide order dated 06.05.2022, the learned Trial Court has restrained the plaintiff herein from creating any third-party rights qua the suit property during the pendency of the suit.

5. In my view, once a suit seeking exactly the same relief, i.e., partition of the suit property, though filed at the behest of another co-sharer is already pending adjudication before another Court, i.e., the Court of the learned ADJ-06, District (Central), Tis Hazari Courts, Delhi it would not be appropriate to entertain the present suit. The plaintiff can and has already claimed his share in the suit property in the aforesaid pending suit before the learned ADJ-06 District(Central), Tis Hazari Courts, Delhi . Merely because



the plaintiff apprehends that the value of his share in the suit property would be more than the pecuniary jurisdiction of the learned ADJ, would not be a ground to permit the plaintiff in filing the present suit instead of defending the already pending suit qua the same suit property.

6. The plaintiff's apprehension that in case the plaintiff were to claim his rightful share in the suit property, the learned ADJ may not have the pecuniary jurisdiction to try the suit is misplaced. In case of such an eventuality, it will be always open for the plaintiff to move an appropriate application before the learned ADJ in the aforesaid suit seeking rejection of the plaint for want of pecuniary jurisdiction. This, however, does not imply that merely on the plaintiff's apprehension that the claim as sought by him would be beyond the pecuniary jurisdiction of the learned ADJ, this Court should permit the continuance of two suits between the same parties seeking the same reliefs.

7. At this stage, it may also be appropriate to refer to Section 10 of the Code of Civil Procedure (CPC) which reads as under and provides that no Court ought to continue with the trial of any suit in which the matter in issue is directly and substantially in question in a previously instituted suit between the same parties.

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 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.



8. It is evident that the objective of Section 10 CPC is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. This provision is not only meant to obviate the possibility of two contradictory verdicts in the same matter by two different Courts but is also to save the parties from multiplicity of cases. In the present case, once the plaintiff admits that a suit for partition of the very same property filed at the behest of defendant no.1 is pending adjudication before the learned ADJ, the present suit would be clearly hit by Section 10 of the CPC.

9. I have also perused the decision in *Des Raj (supra)* relied upon by the plaintiff but find that the same is not applicable to the facts of the present case. In the said decision, the Apex Court was dealing with a question of maintainability of two successive suits seeking partition; the second suit having been filed after the dismissal of the first partition suit. The Apex Court held that a co-owner is entitled to file successive suits for partition as the cause of action thereof would be a continuous one. In the present case, the question before this Court is not whether two successive suits for partition, the second after the dismissal of the first suit can be filed or not but whether two partition suits between the same parties in respect of the same suit property should be entertained. The decision in *Des Raj (supra)* would therefore not be applicable to the facts of the present case.

10. Once the plaintiff, as a defendant in CS DJ No. 482/2022, has already prayed for his share in the very same suit property, of which partition is being sought in the present suit, permitting the plaintiff to prosecute the present suit would, in my opinion be clearly violative of Section 10 CPC. In



the ordinary course, this Court would have stayed the proceedings in the present suit till the pendency of CS DJ No. 482/2022. However, taking into account that summons are yet to be issued in the present suit, no useful purpose would be served in first issuing summons and then staying the suit to await the outcome of CS DJ No. 482/2022. I, am, therefore of the opinion that this is a fit case where the plaint ought to be rejected and returned to the plaintiff.

11. Needless to state, the rejection of the plaint will neither, in any manner, come in the way of the plaintiff taking appropriate pleas in the suit pending before the Court of the learned ADJ-06, District (Central), Tis Hazari Courts, Delhi nor will it be considered as an expression by this Court on the merits of the plaintiff's claims.

(REKHA PALLI)
JUDGE

AUGUST 14, 2023

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