

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.898 of 2017

1. Manorma Devi, W/o Late Gopi Kant Jha
 2. Chunnu Jha S/o Late Gopi Kant Jha
 3. Amod Jha S/o Late Gopi Kant Jha
 4. Ranjit Kumar Jha S/o Late Gopi Kant Jha
 5. Raja Jha S/o Late Gopi Kant Jha
- All are R/o Vill- Barharwa, P.S. - Sanichari , Distt- West Champaran.

... .. Petitioners

Versus

1. Guneshwar Jha S/o Late Padmeshwar Jha
 2. Most. Bharti Devi W/o Late Gyaneshwar Jha
 3. Deepak Jha S/o Late Gyaneshwar Jha
 4. Vivek Jha S/o Late Gyaneshwar Jha
 5. Ranjan Jha S/o Late Gyaneshwar Jha
 6. Arti D/o Late Gyaneshwar Jha
 7. Priti D/o Late Gyaneshwar Jha
 8. Sunita D/o Late Gyaneshwar Jha
 9. Archana D/o Late Gyaneshwar Jha
 10. Kalpana D/o Late Gyaneshwar Jha
- All R/o Vill- Barharwa, P.S. - Sanichari , Distt- West Champaran.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dvivedi, Sr. Advocate
Mr. Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date :30-09-2024

The present civil misc. petition has been filed under Article 227 of the Constitution of India against the order dated 08.12.2016 passed by the learned Subordinate Judge-V, West Champaran, Bettiah in Title Suit No. 198 of 1998, whereby and whereunder the learned Subordinate Judge stayed the Title Suit



No. 158 of 2012 under Section 10 of the Code of Civil Procedure, 1908 (for short 'the Code') *suo motu* out of amalgamated suits namely, Title Suit No. 189 of 1998 and Title Suit No. 158 of 2012, which were earlier amalgamated for common hearing vide order dated 12.03.2013 passed in Title Suit no. 189 of 1998. Another order dated 09.03.2017 passed by the learned Subordinate Judge is also under challenge in the present petition whereby the application of the petitioner to recall/review the order dated 08.12.2016 has also been rejected.

02. Briefly stated, the facts of the case are that the petitioners are plaintiffs of Title Suit No. 189 of 1998 which was filed seeking a decree of permanent injunction against the defendants/respondents restraining them, from going over the lands purchased by the original plaintiff, Gopi Kant Jha, vide four sale deeds dated 09.10.1980, 28.11.1988, 10.07.1992 and 28.07.1992 and from disturbing their peaceful possession. In his written statement, defendant no. 2 who is respondent no.2 herein, claimed his title and possession over the purchased lands of the original plaintiff on the basis of two sale deeds dated 28/29.10.1918 and 03.01.1925 in the name of their ancestor, Dhanurdhari Jha. Thereafter, the plaintiffs filed an amendment petition about three sale deeds dated 26.10.1918, 28/29.10.1918



and 03.01.1925 claiming that the existence of the same became known to the plaintiffs after filing of the written statement and sought certain reliefs in respect of these three sale deeds. However, the amendment petition was dismissed by the learned Subordinate Judge. After getting advice to withdraw their suit while seeking liberty to file it afresh, incorporating all facts, issues and reliefs and in order to avoid multiplying of the litigation, a withdrawal application was filed which was also rejected by the learned Sub Judge. The plaintiffs/petitioners challenged the said order before this Court in Civil Revision No. 614 of 2019, but the same was also rejected by this Court. Thereafter, the plaintiffs filed another title suit seeking declaration that the sale deeds dated 26.10.1918, 28/29.10.1918 and 03.01.1925 are not concerned with the lands purchased by the original plaintiff vide his four sale deeds and the plaintiffs/petitioners sought declaration of title and confirmation of possession over the Schedule-1 property of the suit and further sought declaration that the sale deeds dated 26.10.1918, 28/29.10.1918 and 03.01.1925 are not with respect to the plaintiffs' land as detailed in Schedule-I of the plaint and the claim of the defendants was absolutely illegal and invalid. In Title Suit no. 189 of 1998, the hearing started and 2-3 witnesses



were examined, the plaintiffs/petitioners filed an application dated 29.11.2012 for amalgamating the Title Suit No. 189 of 1998 and Title Suit No. 158 of 2012 for hearing together. The prayer was so made as the evidences to be led by the parties in both the title suits were the same, oral as well as documentary, and the reliefs of one suit depended upon the reliefs of another suit and the parties were also the same. The said application of the plaintiffs/petitioners was allowed vide order dated 12.03.2013 passed by the learned Subordinate Judge, Bettiah in Title Suit No. 189 of 1998. A formal rejoinder was filed by the defendants on 27.11.2013, eight months after passing of the order but it was never pressed. From 2013 to 2016, the defendants continued to participate in the amalgamated suits. Thereafter, an application dated 23.09.2016 was filed on behalf of the defendants for recall of the order dated 12.03.2013 on the ground that the defendants were not heard before passing of the said order. The learned Subordinate judge did not find any substance in the prayer for recall of the order dated 12.03.2013, therefore, he did not pass any order for recall. However, learned Subordinate Judge applied the principle of Section 10 of the Code and passed the order dated 08.12.2016 under Section 151 of the Code for staying Title Suit No. 158 of 2012. Subsequent



prayer for recall of the order dated 08.12.2016 also came to be rejected by the learned Subordinate Judge vide order dated 09.03.2017. Both the orders have been challenged before this Court in the present petition.

03. Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing on behalf of the plaintiffs/petitioners submitted that the order of the learned trial court is not sustainable as the same is without jurisdiction. There is complete non-application of mind as the matter in issue in two suits are completely distinct and different and the principles of Section 10 of the Code do not apply. Hence, the stay of the subsequent suit is wrong and illegal. The impugned order dated 08.12.2016 is completely absurd as order dated 12.03.2013 has never been recalled and for this reason, stay of one of the amalgamated suits had the effect of stay of both the suits. Mr. Dvivedi further submitted that amalgamation order has not been challenged and it has attained finality, but the learned trial court missed this fact. Mr. Dvivedi further submitted that though the learned trial court has mentioned that it has gone through the plaint and written statement, it appears the learned trial court did not bother to look into the pleadings, otherwise it would have found that though the parties and subject matter are same, the



issues to be decided in the two suits and the reliefs claimed by the plaintiffs are different, distinct and separate though complementary to each other. Therefore, the matter in issue is not the same. So, there could no application of Section 10 of the Code. Mr. Dvivedi further submitted that taking recourse of Section 10 of the Code at the stage when the suits were already ordered to be amalgamated and trial has been proceeding in amalgamated suits, taking *suo motu* notice of application of Section 10 of the Code is bad in the eyes of law. If the trial has been proceeded and witnesses were being examined in amalgamated suits, there was no occasion for the learned trial court for holding that the T.S. No. 158 of 2012 was in nascent stage. Learned trial court further got swayed by the averments made in the petition dated 23.09.2016 about the plaintiffs' filing application for amendment and seeking withdrawal of the suit but the learned trial court ought to have considered that if the prayer for amendment or withdrawal was not allowed, the only option left with the plaintiffs/petitioners was to file the second suit and it was in the interest of justice that both the suits should have proceeded together. Otherwise, plaintiffs would have become remediless once the plaintiffs have been denied the liberty of filing a fresh suit after withdrawal of previous one.



Mr. Dvivedi again reiterated that first suit has been filed seeking permanent injunction with respect to the suit property, which the original plaintiff claimed to have purchased through four sale deeds, against the defendants by restraining them from interfering with the possession of the plaintiffs in any manner. On the other hand, the subsequent suit has been filed seeking declaration of title and possession over the suit land and at the same time seeking further declaration that three sale deeds dated 26.10.1918, 28/29.10.1918 and 03.01.1925 in favour of the ancestor of the defendants were not executed in connection with the suit property and the claim of the defendants was wrong and *non est* against the suit property and their sale deeds are void documents. Mr. Dvivedi further submitted that the learned trial court ought to have taken into consideration that if the previously instituted suit was badly drafted, it was not due to fault of the original plaintiff, but if it fails, the plaintiffs would suffer irreparable loss and injury without any fault on their part. As the subsequent suit would become questionable in the eyes of law and would be in perpetual fear of rejection under Section 11 of the Code and Section 34 of the Specific Relief Act. So, the interest of justice also demands that the plaintiffs/petitioners should not be left in lurch, hence, suit should not be allowed to



proceed in piecemeal manner.

Mr. Dvivedi referred to Para-8 of the decision of Hon'ble Supreme Court in the case of ***National Institute of Mental Health & Neuro Sciences v. C. Parameshwara***, reported in ***(2005) 2 SCC 256***, which reads as under:

“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 subject matter in both the proceedings is identical."

Mr. Dvivedi further submitted that Section 10 applies only in cases where the whole of the subject matter in both the suits is identical, i.e., the matter in issue is same. But the matter in issue must be directly and substantially in issue in the previous instituted suit and not incidentally or collaterally in issue. Thus, Mr. Dvivedi submitted that even on this yardstick, the order of the learned trial court is bad, therefore, the impugned orders could not be sustained and need to be set aside.

04. From the record, it appears that notice was issued to the respondents but despite valid service, the respondents did not appear before this Court and the matter proceeded in their absence.

05. I have given my thoughtful consideration to the submission made on behalf of the plaintiffs/petitioners in the light of facts and circumstances of the case. Amalgamation of



suits is not specifically provided under the Code. However, in apposite circumstances, the court uses its power under Section 151 of the Code to amalgamate the suit, if similar subject matters between same parties are before it.

06. Word ‘Amalgamation’ as defined in the Black’s Law Dictionary reads as under:

“Amalgamation:- Union of different races, or diverse elements, societies, unions, associations, or corporations, so as to form a homogeneous whole or new body; interfusion; intermarriage; consolidation; merger; coalescence; as, the amalgamation of stock.”

07. If two matters have been amalgamated, naturally they have been merged into one. Such amalgamation, therefore, could be de-amalgamated only in exceptional circumstances and not in the manner as ordered by the learned trial court. Once the learned trial court proceeded on the assumption that two suits are to be merged and tried together, without assigning valid reasons, the order could not be passed for taking out one suit from the amalgamated matter and staying the same under Section 10 of the Code.

08. Section 10 of the Code reads as under:

“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].”*

09. Applying the law to the facts of the present case, no doubt the parties are the same and suit property is also the same but that does not mean the matter in issue would also become the same. In default, Section 10 demands the matter in issue in subsequent suit should be directly and substantially in issue in a previously instituted suit. The matters incidentally or collaterally in issue is distinguishable from the matters directly or substantially in issue as in the present case.

10. The first suit of the plaintiffs/petitioners is a good example of a bad drafting because no declaration was sought while seeking permanent injunction. When the plaintiffs/petitioners were denied opportunity to amend the plaint or to withdraw the plaint, they were left with no other



option but to seek their remedy against the claim of the defendants by filing another suit and the plaintiffs/petitioners could not be faulted on this count. In these circumstances, the initial order for amalgamation was a correct order and the learned trial court should not have interfered with it in casual manner under its inherent jurisdiction under Section 151 of the Code. Moreover, the casual approach of the learned trial court is also evident from the fact that no orders have been passed recalling the order dated 12.03.2013. The learned trial court just stayed the Title Suit No. 158 of 2012 invoking the provisions under Section 151 of the Code, which appears to be a material irregularity.

11. In the light of discussion made here-in-before, I am of the view that the impugned orders dated 08.12.2016 and 09.03.2017 passed by the learned Subordinate Judge-V, West Champaran, Bettiah could not be sustained and hence, the same are set aside.

12. The learned trial court is directed to proceed with the matters with amalgamated suits and try to dispose of both the suits within next six months of receipt/production of a copy of this order considering the antiquity of the suits.

13. With the aforesaid direction, the present



petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	03.09.2024
Uploading Date	01.10.2024
Transmission Date	NA

