



2025:DHC:9725-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31.10.2025

+ **FAO(OS) 129/2025, CM APPL. 67790/2025 (Stay) & CM APPL. 67791/2025 (Ex.)**

ADARSH SHARMA

.....Appellant

Through: Mr. Sandeep P. Agarwal,
Senior Advocate with Mr.
Kushagra Pandit, Advocate

versus

HARSH SHARMA

.....Respondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

ANIL KSHETARPAL, J.

1. The present Appeal, under Section 10 of the Delhi High Court Act, 1966, impugns the **Order dated 09.09.2025¹** passed by the learned Single Judge of this Court in I.A. No. 20378/2023 in CS(OS) 59/2020. By way of the impugned Order, the learned Single Judge has rejected the Appellant's application filed under Section 10 of the **Civil Procedure Code, 1908²** seeking a stay of further proceedings in CS(OS) 59/2020, which is a subsequently instituted suit.

2. In order to comprehend the controversy involved in the present

¹ Impugned Order

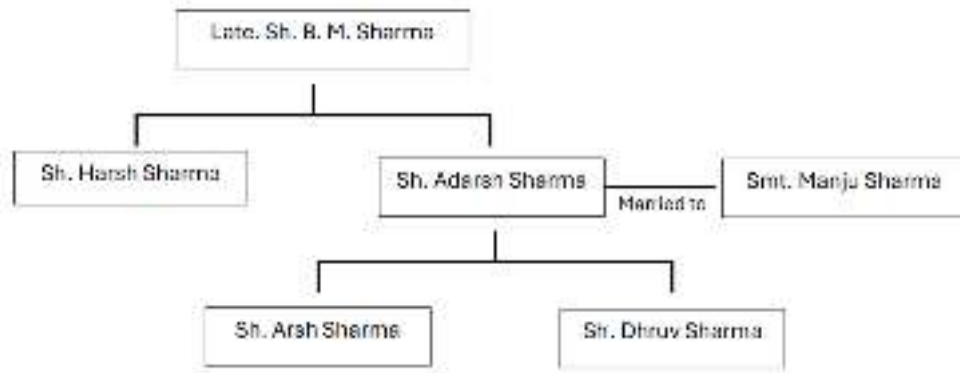
² CPC



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case, the relevant facts, *albeit* briefly, are required to be noted. The genealogical chart of the family reads as under:



3. The initial suit, being CS(OS) 1251/2009, has been filed by Mr. Arsh Sharma, Mr. Dhruv Sharma and Ms. Manju Sharma while impleading Mr. Adarsh Sharma as Defendant No.1 and Mr. Harsh Sharma as Defendant No.2. The memo of parties of the aforesaid suit is as under:

“MEMO OF PARTIES

1. Arsh Sharma
s/o Shri Adarsh Sharma
r/o C-32, West End Colony,
Rao Tularam Marg, New Delhi
 2. Dhruv Sharma
s/o Shri Adarsh Sharma
r/o C-32, West End Colony,
Rao Tularam Marg, New Delhi
 3. Smt. Manu Sharma
w/o Shri Adarsh Sharma
r/o C-32, West End Colony,
Rao Tularam Marg, New Delhi
-Plaintiffs

Vs.

1. Shri Adarsh Sharma
son of late Shri B. M. Sharma
r/o C-32, West End Colony,
Rao Tularam Marg,

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- New Delhi
2. Shri Harsh Sharma
son of late Shri B. M. Sharma
r/o D-130, Sector-56
Sushant Lok-II,
Gurgaon
 3. Smt. Sagrika Maheshwari
w/o Shri Ravi Kant Maheshwari
r/o B-4, Time Square
W-43, Greater Kailash-II
New Delhi
 4. Ms. Chandra Prabha Sharma
d/o late Hira Lalji Paliwal
r/o C-32, West End Colony,
Rao Tularam Marg, New Delhi
-Defendants”

4. The aforementioned suit had been filed for the grant of the following reliefs:

- “a) Pass a decree of declaration in favour of plaintiff no.1 and 2 and against defendants declaring that the memorandum of arrangement dated 28/12/1996 between defendants is illegal, non-est, null and void.
- b) Pass a decree of declaration in favour of plaintiff no. 1 and 2 and against defendants declaring that the memorandum of understanding dated 12/02/2008 between defendants is illegal, non-est, null and void as also relinquishment deed dated 02/04/2008 by defendant no.1 in favour of defendant no.3 is similarly is illegal, non-est, null and void.
- c) Pass a decree in favour of plaintiff no.1 and 2 and against defendants directing setting aside of and cancellation of memorandum of arrangement dated 28/12/1996 between defendants and any alleged rights in favour of the defendants there under.
- d) Pass a decree in favour of plaintiff no.1 and 2 and against defendants directing setting aside of and cancellation of memorandum of understanding dated 12/02/2008 registered as document no. 764 in additional book no.4, Vol no. 3120 on pages n 70 to 75 registered on 18/02/2008 in the office of Sub-registrar assurances, New Delhi between defendants and any alleged rights in favour of defendants thereunder as also direct setting aside of and cancellation of relinquishment deed dated 02/04/2008 by defendant no.1 in favour of defendant no.3 made pursuant to such memorandum of understanding dated 12/02/2008.
- e) Pass a preliminary decree thereby ascertaining and declaring the lawful share of plaintiff no.1, plaintiff no.2, defendant no.1 and plaintiff no.3 in the immovable properties mentioned in para 2 of

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the plaint.

f) Pass a preliminary decree for rendition of accounts in favour of plaintiff no.1 and 2 and against defendant no.1 thereby directing him to render the true and correct accounts in regard to the rents realized by defendant no.1 in regard to properties in question.

g) Appoint a commissioner with directions to partition the properties by metes and bounds in terms of shares of plaintiff no.1, plaintiff no.2, defendant no.1 and plaintiff no.3 so determined and ascertained by this Hon'ble Court and further direct defendant no.1 to render true and correct accounts of the rents and other incomes so realized by him from the properties in question to learned Commissioner appointed by this Hon'ble Court.

h) A final decree in favour of plaintiffs and against defendant no.1 be passed partitioning the properties mentioned in para 2 of the plaint in terms of the report submitted by learned commissioner as well as of separate possession of the partitioned share fallen to the share of the parties.

i) final decree in favour of the plaintiff no.1 and 2 and against defendant no.1 in terms of report of the Learned commissioner with regard to rendition of accounts and the plaintiffs be paid such amounts which may be found due by the Learned commissioner.

j) Grant costs of the suit.

k) Pass such other and further order and grant such other and further relief as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

5. In substance, the Plaintiffs in the said suit claimed that Mr. Adarsh Sharma has wrongly entered into a **Memorandum of Understanding**³ on **28.12.1996 and 12.02.2008** by which the suit property fell to the share of Mr. Harsh Sharma, Defendant No.2 therein, who is the Plaintiff in the subsequently instituted suit.

6. It is also claimed by the Plaintiffs namely Ms. Manju, Mr. Dhruv and Mr. Arsh that the suit property is a coparcenary property and therefore there could not be any settlement or partition of the same in their absence.

7. Subsequently, Mr. Harsh Sharma filed CS(OS) 59/2020 against his brother Mr. Adarsh Sharma, for grant of a decree of peaceful

³ MoUs



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possession of the same suit property, i.e. C-32B, Rao Tula Ram Marg, Westend Colony, New Delhi. In the said suit, Mr. Harsh Sharma claimed entitlement to the possession on the basis of **MoUs dated 20.12.1996 and 12.02.2008**.

8. Learned Single Judge found that substantial issues in both the suits were not identical and therefore, the requirements of Section 10 of the **CPC** were not fulfilled.

9. We have heard the learned Senior counsel for the Appellant at length and, with his able assistance, perused the paperbook along with the copies of Plaints in **CS(OS) 1251/2009 & CS(OS) 59/2020**.

10. It is contended by learned Senior counsel for the Appellant that on 13.09.2016, a consent Order was passed by the learned Single Judge wherein the parties agreed to maintain *status quo* with regard to the title of the suit property and not to interfere with the possession of the Plaintiffs in CS(OS) 1251/2009 except in accordance with law.

11. While drawing the attention of this Court to issue Nos.9 and 10, learned Senior counsel for the Appellant would contend that the validity of the Memorandums of Family Settlement arrived at on 28.12.1996 and 12.02.2008 are subject matter of issue in the first suit. He further contended that there was a compromise decree passed on 04.06.1976 and now Mr. Harsh Sharma (Respondent herein) has become dishonest and coerced the Appellant into affixing his signatures on the Memorandums of Family Settlement.

12. Learned Senior counsel for the Appellant relies upon the Judgments passed by this Court in the case of ***Punjab & Sind Bank vs. Lalit Mohan Madan & Co. : 2012 (130) DRJ 436*** and ***Sagar Shamsher Jung Bahadur Rana and Anr. Vs. The Union of India &***



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Ors. : 1978 SCC OnLine Del 220. He further relies upon Judgment passed by the High Court of Kerala at Ernakulam in the case of ***Radhika vs. Unnikrishnan : 2024 SCC OnLine Ker 856.***

13. Before proceeding to analyse the arguments advanced by the learned Senior counsel for the Appellant, it is important to take note of Section 10 of CPC, which reads as under:

“Section 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.”

14. A perusal of the same would clarify that Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in the aforementioned provision are “the matter in issue and substantially in issue” in the previously instituted suit. The words ‘directly and substantially in issue’ are used in contradiction to the words ‘incidentally or collaterally in issue’, meaning thereby that section 10 would only apply if the matter in issue in both the suits is identical or to put simply, that the whole of the subject matter in both the proceedings are indistinguishable.

15. Before further proceeding in a subsequently instituted suit is stayed, the Court is required to come to the conclusion that both the suits are on the same subject matter and the suits are between the same parties or parties under whom they or any of them claim to litigate



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under the same title.

16. Moreover, the “matter in issue” must be directly or substantially the same in both suits. These are the broad parameters which are required to be applied before further proceedings in a subsequently instituted suit is stayed. In the present case, as is evident from the Memo of Parties extracted herein above, the parties are not the same. Ms. Manju Sharma, Mr. Arsh Sharma and Mr. Dhruv Sharma are not claiming through the Appellant (Mr. Adarsh Sharma).

17. Secondly, the “matter in issue” does not mean the identity of the property. The expression “matter in issue” means the substance of the case and the dispute which is required to be adjudicated by the Court. In the first suit, the Plaintiffs are claiming that the property is a Joint Hindu Family coparcenary property and hence, their father had no right to execute MoUs, which is not the subject matter of issue in the second/subsequent suit because in the second suit, Mr. Harsh Sharma has filed suit for possession against his brother, Mr. Adarsh Sharma.

18. Additionally, staying of subsequent suit would not be in the interest of justice because if the first suit is dismissed, the proceedings in the second suit will have to continue. The judgment passed in the first suit may not operate as *res judicata* in the second suit particularly when all the issues are not common and there is no *interse* issue between the co-defendants. In the first suit, Mr Adarsh Sharma and Mr. Harsh Sharma are Defendant Nos. 1 and 2, respectively, and the issues pertain between the Plaintiffs and the Defendants therein. Whereas, as already noted above, the suit subsequently instituted by Mr. Harsh Sharma is a suit for possession against Mr. Adarsh Sharma.

19. We have also perused the judgements relied upon by the learned



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Senior counsel for the Appellant herein. In *Punjab & Sind Bank vs. Lalit Mohan Madan & Co.(supra)*, the parties in both the suits were the same and so was the subject matter of the two suits instituted by either of the parties. It is of importance to note that this Court has, in the aforementioned judgement, also discussed the test of applicability of Section 10 of CPC, which further augments the reasoning as discussed above. The relevant paragraphs read as under:

“10. The essential ingredients for the applicability of Section 10 of the Code are that if the matter in issue between the parties 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 and both the proceedings are pending before the competent courts of law the second suit shall be stayed. This provision is mandatory. The object of Section 10 is to prevent courts of current jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The following essential conditions for the application of Section 10 of the Code can be broadly enumerated as under:

- (a) There must be two pending suits on same matter,
- (b) These suits must be between same parties or parties under whom they or any of them claim to litigate under same title,
- (c) The matter in issue must be directly and substantially same in both the suits,
- (d) The suits must be pending before competent Court or Courts,
- (e) The suit which shall be stayed is the subsequently instituted suit.

11. One of the test of the applicability of Section 10 is whether on the final decision being reached in the previous suit such a final decision will operate as res judicata in a subsequent suit; to decide whether the second suit is hit by Section 10, the test is to find out whether the plaint in one suit would be the written statement in the other suit or not. If this test is positive the decision in one suit will operate as res judicata in the other suit. This is the principal test on which Section 10 is applied.”

20. The other two judgements relied upon by the learned Senior

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counsel for the Appellant, being *Sagar Shamsher Jung Bahadur Rana and Anr (supra)* and *Radhika vs. Unnikrishnan (supra)*, are also distinguishable on facts since the parties therein to the suits were identical, unlike in the present case.

21. In view of the aforementioned facts and circumstances and law laid down for the test of applicability of Section 10 of CPC, we find no infirmity in the Order impugned herein and therefore, it does not merit interference.

22. The Appeal is dismissed along with pending applications (if any).

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 31, 2025/rk/va/sh

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