



2025:DHC:11731



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

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Date of Decision: 22.12.2025+ **CM(M) 2475/2025**

JANAK TARA through LRs

.....Petitioners

Through: Mr. Sajjan K. Singh and Mr. Jaypreet
Singh, Advocates

versus

KAUSHILYA DEVI & ORS.

.....Respondents

Through: None

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. Petitioners/plaintiffs have assailed order dated 20.01.2025 of the learned trial court, whereby the suit filed by them was stayed under Section 10 CPC on the basis of an earlier suit that was filed and is continuing in Gonda, U.P. Having heard learned counsel for petitioners/plaintiffs, I find it not a fit case to even issue notice.

2. Broadly speaking, the now deceased predecessor of the present petitioners filed the subject suit, seeking recovery of possession of the immovable property and cancellation of sale deed or any other document executed in the name of the present respondents, as well as for occupation charges and injunction. In the subject suit, the defence of the present

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respondents was struck off, as submitted by learned counsel for petitioners/plaintiffs (*though not mentioned in the impugned order*). The present respondents filed an application seeking stay of trial of the subject suit on the ground that the present respondent no. 1 had already filed a suit for cancellation of Will dated 16.05.2008 of Smt. Shanti Devi, which suit is pending in the court of Civil Judge, Senior Division, Gonda, U.P. and it is the said Will dated 16.05.2008, on the basis whereof the predecessor of the present petitioners claimed her right in the subject property. The present petitioners contend that the subject property devolved upon Smt. Shanti Devi, after her husband Shri Ram Milan passed away on 11.05.2004 and Smt. Shanti Devi bequeathed the subject property by way of Will dated 16.05.2008 in favour of the now deceased predecessor of the petitioners/plaintiffs. It is under these circumstances that the learned trial court stayed the subject suit in terms with Section 10 CPC.

3. The only argument advanced on behalf of petitioners/plaintiffs in order to assail the impugned order is that in the subject suit, defence of the present respondents stands struck off, therefore, the present respondents are barred from filing any application under Section 10 CPC.

3.1 At this stage in the course of dictation, learned counsel for petitioners/plaintiffs also submits that since the applicant of the application under Section 10 CPC is not a party to the suit pending in Gonda, U.P., the application is not maintainable and that the application was filed after almost four years of institution of the subject suit.

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4. For convenience, the provision under Section 10 CPC is extracted below:

“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 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.

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”.

5. As would be evident from the plain language of the provision, it is not necessary that an applicant bringing the application under Section 10 CPC should be a party to the subject suit; it is the duty of the Court to stay the subject suit on being informed about pendency of another suit in which directly or substantially the issue involved is same as in the subject suit. Further, it is also evident from the provision itself that both suits must be between the same parties or between parties under whom they or any of them claim litigating under the same title.

6. In the present case, the validity of the Will dated 16.05.2008 of Smt. Shanti Devi is an issue which is directly and substantially in issue in both



suits. Merely because in the subject suit, defence has been struck off, it cannot be said that the respondents/defendants are barred from filing an application under Section 10 CPC.

7. The object of Section 10 CPC is to avoid parallel trials on the same issue by two courts so that conflicting findings of facts can be prevented. In case the present respondents pursuing the suit pending in Gonda, U.P., succeed in establishing that the Will dated 16.05.2008 was not validly executed by Smt. Shanti Devi and consequently, there is no title in favour of the present petitioners over the subject property; and at the same time, if the petitioners/plaintiffs succeed in the subject suit, there would be a clear conflict of findings in decision of the two courts. The purpose of Section 10 CPC is to prevent that.

8. As regards the delay in filing the application under Section 10 CPC, it is trite that mere delay cannot be a ground to throw out an application summarily, much less, in a case where the law vests a duty on the court as in case of Section 10 CPC.

9. I am unable to find any infirmity in the impugned order, so the same is upheld.

10. The present petition is dismissed.

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(JUDGE)

DECEMBER 22, 2025/as

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