HC-KAR

NC: 2026:KHC:23692
W.P. No.19309/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.19309/2021 (GM-CPC)

BETWEEN:

1. M/S. VIGNESHWARA ESTATES
A REGISTERED PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE
AT NO.10/1, LAKSHMINARAYAN COMPLEX
PALACE ROAD, BANGALORE-560052
REPRESENTED BY ITS PARTNERS.

Digitally signed by RUPA V
Location: HIGH COURT OF KARNATAKA

2. MRS. INDU MODI
PARTNER M/S VIGNESHWARA ESTATES
AGED 71 YEARS
W/O MR. J.K. MODI
R/AT C-9/15, DLF CITY PHASE-1
GURGAON, HARYANA-122002.

AND ALSO AT FLAT NO.100
OORVE APARTMENTS, NO.60
MUNI MARAPPA ROAD
OFF NANDIDURG ROAD
JAYAMAHAL, BANGALORE-560046.

3. M/S. CORENCO ENTERPRISES PVT LTD
PARTNER M/S VIGNESHWARA ESTATES
A COMPANY INCORPORATED AND
REGISTERED UNDER THE PROVISIONS
OF THE COMPANIES AC 1956
HAVING ITS REGISTERED OFFICE
AT NO.295 AND 296, UNIT-2
100 FEET ROAD, INDIRANAGAR
BANGALORE-560038
REP. BY ITS DIRECTOR
MR. ADITYA KAURA.

4. MR. ADITYA KAURA
AGED 45 YEARS
S/O MR. R.N. KAURA
R/AT FLAT NO.100, OORVE APARTMENTS
NO.60, MUNI MARAPPA ROAD
OFF NANDIDURGA ROAD
JAYAMAHAL, BANGALORE-560046.

5. MRS. SHRUTI KAURA
AGED 45 YEARS
D/O MR. J.K. MODI
R/AT FLAT NO.100, OORVE APARTMENTS
NO.60, MUNI MARAPPA ROAD
OFF. NANDIDURG ROAD
JAYAMAHAL, BANGALORE-560046.

…PETITIONERS

(BY SRI. SHALINI CAROL EDITH JOHN, ADV.,)

AND:

MRS. P. RAJITHA
W/O MR. B.K. SUDHAKAR
AGED 43 YEARS
R/AT NO.1118, 23RD MAIN ROAD
23RD CROSS, II SECTOR
H S R LAYOUT, BANGALORE-560102.

…RESPONDENT

(BY SRI. RAJESWARA P.N. ADV., FOR R1)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 07.06.2021 PASSED IN O.S.NO.26214/2019, BY THE LEARNED XIII ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYO HALL, BANGALORE (CCH-22) DISMISSING I.A.NO.3 FILED U/S 10 OF THE CODE OF CIVIL PROCEDURE, 1908 AND CONSEQUENTLY ALLOW I.A.NO.3 ANNEXURE-A & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 23.04.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

This petition is filed challenging the order dated 07.06.2021 passed on I.A.No.3 in O.S.No.26214/2019 by the XIII Additional City Civil and Sessions Judge, Mayohall Unit, Bengaluru (hereinafter referred to as ***'the Trial Court'***).

2. Smt.Shalini Carol Edith John, learned counsel for the petitioners submits that the petitioners have filed the suit in O.S.No.1938/2019 for the relief of declaration of ownership and permanent injunction on 11.03.2019 and later the respondent herein has filed a suit in O.S.26214/2019 for injunction with regard to same property. It is submitted that the issue involved in the suit filed by the petitioners, which is prior, and the issue involved in the later suit filed by the respondent are substantively one and the same, hence, the petitioners filed an application under Section 10 of Code of Civil

Procedure, 1908, (for short, ***'CPC'***) to stay the later suit filed by the respondent herein. It is further submitted that the trial Court under the impugned order rejected the application on the ground that the survey numbers and the parties in both the suits are different and refused to stay the further proceedings in the suit. It is also submitted that the respondent has filed Miscellaneous Petition in Misc.No.1260/2024 seeking to transfer their suit to the same Court where the suit filed by the petitioners is pending and in the said petition a specific stand is taken that the subject matter of both the suits are one and the same and the parties claim the right in respect of very same property and now they cannot take a different stand by contending that the issue involved in the suits are distinct. It is contended that if the later suit filed by the respondent is allowed to continue, there will be divergent finding in two suits between the same parties on the same issue. It is further contended that in both the suits the trial Court is required to consider as to whether the

property claimed by the parties is one and the same, in other words, it is a boundary dispute, hence, the later suit is required to be stayed as the suit filed by the petitioners is a comprehensive suit. In support of her contentions, she placed reliance on the following decisions:

i. ***Gupte Cardiac Care Centre and Hospital vs. Olympic Pharma Care (P) Ltd.***[1]
ii. ***Sri.B.Krishnappa and another vs. Sri.Venkatachalapathi***[2]

Hence, she seeks to allow the petition.

3. *Per contra*, Sri.Rajeswara P.N., learned counsel appearing for the respondent supports the impugned order of the Trial Court and submits that the respondent herein was not a party in the suit filed by the petitioners and later an application for impleading was filed on 23.10.2019, however, in the meantime, the respondent has filed O.S.26214/2019 on 19.09.2019 which was prior to the impleadment of respondent in O.S.No.1938/2019, hence,

[1] (2004) 6 SCC 756

[2] WP No.47290/2016 DD 24.06.2022

in view of Section 21 of the Limitation Act, 1963 the petitioners cannot contend that the suit filed by them is prior to the suit filed by the respondent. It is submitted that the suit filed by the respondent is earlier in point, therefore, Section 10 of CPC has no application. It is further submitted that the suit schedule property in both the suits are distinct and different and parties to the suit as well. It is also submitted the cause of action shown in both the suits are different, hence, the ingredient of Section 10 of CPC are not available and now the suits are being tried in the same Court, hence, no prejudice would be caused to the other side if the suit filed by the respondent is allowed to continue. It is contended that the parties have agreed for the procedure of disposal of suit and based on such an agreement, the trial is already commenced and hence, the question of staying the suit of the respondent does not arise. In support of his contentions, he placed reliance on the memo dated

23.04.2026 and the documents placed along with the said memo and also relies on the following decisions:

i. ***Ramalingam Chettiar vs. P.K.Pattabiraman and another***[3]

ii. Aspi Jal and another vs. Khushroo Rustom Dadyburjor[4]

ii. Uma Devi and others vs. Anand Kumar and others[5]***.***

Hence, he seeks to dismiss the petition.

4. I have heard the learned counsel for the petitioners, learned counsel for the respondent and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

5. The petitioners have filed O.S.No.1938/2019 against P.Ramprasad for the relief of declaration that the petitioner No.1 firm is the absolute owner of the suit

[3] (2001) 4 SCC 96

[4] (2013) 4 SCC 333

[5] (2025) 5 SCC 198

schedule property and permanent injunction against the defendant from disturbing the plaintiffs' peaceful possession and enjoyment of the suit schedule property. The suit schedule property is all that piece and parcel of converted residential land measuring 24.79 guntas in Sy.No.34/4, Junnasandra Village, Varthur Hobli, Bengaluru East Taluk. The boundaries shown to the schedule are that towards east by land in Sy.No.34/4 of Junnasandra Village measuring 2 acre 12.11 guntas; west by 40 feet wide road; north by land in Sy.34/2 of Junnasandra Village and south by remaining land in Sy.No.34/4 of Junnasandra Village measuring 2 acre 12.11 guntas owned by the plaintiffs. The defendant in the said suit has filed written statement denying the assertions made in the plaint. Subsequently, the respondent herein i.e., P.Rajitha, has filed O.S.No.26214/2019 against the petitioners herein for the relief of injunction. The suit schedule property in the said suit is shown as all the piece and parcel of converted land bearing Sy.No.34/2 measuring 3 acre 5 guntas

situated at Junnasandra Village, Varthur Hobli, Bengaluru East Taluk. The boundaries shown to the schedule are towards east by land in Sy.No.34/3 and 34/4; west by 40 feet road formed out of land in Sy.No.34/2 belonging to Sri.K.Satish Kumar; north by 60 feet road formed out of land in Sy.No.34/2 and south by land in Sy.No.34/4.

6. It is to be noticed that the survey numbers in both the suits and extent are distinct. The petitioners filed an application under Section 10 of CPC seeking stay of O.S.26214/2019 on the ground that the issue involved in the suit filed by the petitioners and the suit of respondent are substantively one and the same, but it is clear on perusal of the plaint that the boundaries of the suit schedule properties are different.

7. It is also to be noticed that the relief sought in the suit filed by the petitioners is for declaration and permanent injunction with regard to the property in Sy.No.34/4 and the respondent in her suit is seeking

injunction against the petitioners herein with regard to the property referred in the suit pertaining to Sy.No.34/2. The property involved in both the suits are different and the plaint averments in both the suits source their titles based on the sale deed and the gift deed and the same is required to be considered by the trial Court while deciding the suit filed by the petitioners for the relief of declaration and injunction as well as the suit filed by the respondent for the relief of injunction on their merits.

8. The Hon'ble Supreme Court in the case of ***Gupte Cardiac Care Centre and Hospital*** referred supra at para Nos.4 and 5 held as under:

> ***"4.*** *It has not been disputed at the Bar that the two suits arise out of the same transaction. Cause of action of one party arrayed as a plaintiff would be its defence in the suit where it is arrayed as a defendant. Though there are two plaintiffs and two defendants in the suit at Nashik while there is only one plaintiff and one defendant in the suit at Delhi but there is substantial identity of the parties in the two suits. The issues arising for decision would necessarily be the same. Only one of the two suits can be decreed. The decree in one suit in favour of the plaintiff in that suit would entail the dismissal of the other suit. It cannot, therefore, be denied that the two suits deserve to be heard and tried in one*

court. That would avoid the possibility of any conflicting decrees coming into existence. And certainly the duplication of evidence, oral and documentary both, would be avoided. The parties and the courts would save their time and energy which would needlessly be wasted twice over.

5. *The suit at Nashik has been instituted first in point of time. By reference to Section 10 CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed. For the exercise of its discretionary jurisdiction under Section 25 of the Code of Civil Procedure, 1908 the only consideration which is relevant is "expediency for ends of justice". The court will have regard to and respect for the rule enacted in Section 10 of the Code. Of course, the considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in an appropriate case persuade this Court to direct a transfer of case in departure from the rule underlying Section 10 of the Code. All would depend on the facts and circumstances of a given case. So far as the present cases are concerned, we deem it proper to transfer the suit at Delhi to the court at Nashik for the purpose of hearing and decision thereat. In doing so we are following the ordinary rule as we do not find any factor or consideration relevant for making a departure therefrom."*

9. This Court in the case of ***Sri.B.Krishnappa*** referred supra at para 8 has held as under:

"8. 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 a case where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are "the mater 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 whole subject-matter in both the proceedings is identical. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue and 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."

10. The Hon'ble Supreme Court in the case of ***Ramalingam Chettiar*** referred supra at para 5 has held as under :

"5. *The said provision shows that parties aggrieved by any proceedings under the Act can bring a suit in the civil court within six months from the time at which the cause of action arose. It cannot be disputed that the plaintiff was aggrieved by the proceedings under the Act and was thus entitled to institute a suit in the civil court. It is also not disputed that, in the present case, the cause of action arose when the application of the respondent was rejected and the sale was confirmed, that is on 11-1-1977. It is also true that the suit was laid in the civil court within six months from the time at which*

the cause of action arose. But in the said suit, the State of Tamil Nadu was not impleaded as a defendant and in the absence of the State of Tamil Nadu, the suit instituted by the plaintiff was incompetent. It was only when IA No. 164 of 1979, filed by the defendant for impleadment of the State of Tamil Nadu was allowed by the trial court, the suit laid by the plaintiff became competent. It is also not disputed that IA No. 164 of 1979 for impleadment of the State was allowed on 11-10-1979. Section 21 of the Limitation Act provides that where after the institution of a suit, if a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. In view of Section 21 of the Limitation Act, so far as the State of Tamil Nadu was concerned, suit filed by the respondent has to be treated as instituted when the application for impleadment of the State of Tamil Nadu was allowed i.e. on 11-10-1979 and by that time the suit stood barred by time."

11. The Hon'ble Supreme Court in the case of ***Aspi Jal*** referred supra at para 9 has held as under:

"9. *Section 10 of the Code which is relevant for the purpose reads as follows:*

*"**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 having 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."

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding."

12. The Hon'ble Supreme Court in the case of ***Uma Devi*** referred supra at para 15 has held as under:

*"**15.** The learned Senior Counsel for the appellant-defendants, Mr Sundaram, relied upon the decision of this Court in Shri Mukund Bhavan Trust v. Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle [Shri Mukund Bhavan Trust v. Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle, (2024) 15 SCC 675 : 2024 SCC OnLine SC 3844] to substantiate the contention that the suit was barred by limitation. It was observed as follows : (SCC paras 22 & 25)*

> *"22. When a portion of the property has been conveyed by court auction and registered in the first instance and when another portion has been conveyed by a registered sale deed in 1952, there is a constructive notice from the date of registration and the presumption under Section 3 of the Transfer of Property Act, comes into operation. The possession, in the present case, also has been rested with the appellant before several decades, which operates as notice of title.*
> *…*
>
> *23.-24. ****
>
> *25. Continuing further with the plea of limitation, the Courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order 7 Rule 11."*

13. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court and this Court, this Court is required to consider as to whether the trial in the suit filed by the respondent in O.S.No.26214/2019 is required to be stayed by considering as to whether the matter in issue is directly and substantially in issue in a previously instituted suit. Admittedly, the suits filed by the petitioners as well as the respondent are pending before the same Court and both the suits are at the trial stage.

14. The perusal of the plaint in O.S.No.1938/2019 indicates that the plaintiffs have shown the cause of action to file the suit arose on 21.08.2012 when the plaintiffs purchased the suit schedule property under the registered sale deed; in the month of August 2018 when the plaintiffs tried to construct the compound wall and the defendant obstructed the same; on 30.08.2018 when the plaintiffs got survey of the suit schedule property by Taluk Surveyor and when the plaintiffs tried to meet the defendant to

discuss the dispute in the month of January 2019. Whereas, the cause of action shown in O.S.No.26214/2019 is on 12.09.2019 when the defendants in the said suit i.e., petitioners herein, tried to encroach upon the suit schedule property in the southern side. Hence, the cause of action in both the suits is distinct.

15. Insofar as subject matters of the suits are concerned, as already stated supra, the property claimed by the petitioners and the respondent are distinct and different which can be noticed from the suit schedule property referred in the respective plaints. The required test to invoke Section 10 of CPC is whether the final decision is being reached in previous suit, such a decision would operate as *res judicata* in a later suit. Section 10 of CPC can be invoked when the subject matter of both the suits is identical, matter in issue is directly and substantially one and the same in both the suits. In the case on hand, as already stated supra, the reliefs in both

the suits are distinct, cause of actions shown in the suits are different and the property claimed are also different, hence, it cannot be said that the issue involved in both the suits are directly and substantially one and the same.

16. Insofar as the contention of the learned counsel for the respondent with regard to the suit in O.S.No.26214/2019 being a prior suit in view of the Section 21 of the Limitation Act, the same need not be gone into in view of the aforesaid finding that the issues in both the suits are not directly and substantially one and the same.

17. However, this Court cannot ignore the fact that the respondent herein has filed Miscellaneous Petition No.1260/2024 seeking to transfer O.S.No.26214/2019 filed by her to the Court where O.S.No.1938/2019 is pending and the said application is allowed by transferring the suit filed by the respondent herein to the Court where the suit of the petitioners is pending and now the both the

suits are being adjudicated by the same Court. In my considered view, there cannot be any divergent opinion of the same Court in two different suits if it is allowed to be tried separately though the dispute in both the suits may not be substantively same, ends of justice would be met if both the suits are clubbed/consolidated together and disposed of to avoid conflicting views.

18. The pleading and material on record *prima facie* indicate that both the petitioners and respondent in their respective suits are asserting the right relating to a particular property though it is shown as different survey number, the claim appears to be for one property or there may be overlapping of the claim between the parties. Be that as it may, this Court does not intend to record any finding on the merits of the case. Hence, I proceed to pass the following:

ORDER

This writ petition is ***disposed of*** by directing the trial Court to consolidate/club

O.S.No.1938/2019 and O.S.No.26214/2019 and dispose of the same in accordance with law after providing sufficient opportunity to the parties.

No orders to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

BSR
List No.: 2 Sl No.: 1