

CS No. 946/18
Society for the Protection and Management of
Aggarwal Jain Temple and Dharamshala Vs. Rajan
Sehgal and Anr

19.09.2024

Present : Mr. Gurpreet Singh Sethi, Ld. Counsel for the
 plaintiff.
 Mr. Dharmendra Kumar, Ld. Counsel for the
 defendants alongwith defendant no. 2 in person.

The application of the defendant under Section 10 r/w
Section 151 CPC is taken up for consideration.

It is stated in the application that the plaintiff had
previously filed a suit bearing no. 144/2013 against the defendant
no. 1 seeking the same reliefs of possession and damages.

It is pleaded that in both these suits instituted by the
plaintiff, the subject matter is the same i.e. Quarter no. 26,
Aggarwal Jain Temple and Dharamshala Complex.

It is submitted that since the matter in issue in both the
suits is directly and substantially the same, the present suit is
liable to be stayed.

Reply to the application has been filed.

Application has been opposed.

Arguments have been heard and record has been perused.

The first suit has been instituted by the plaintiff against the
defendant for recovery of possession of Quarter No. 26,
Aggarwala Jain Temple and Dharamshala Complex and the

unauthorized construction carried out by the defendants above this quarter.

In the first suit, cause of action is that the above property was rented out to the predecessor in interest of the defendant and that the tenancy has now been surrendered and exterminated.

The second suit is not pertaining to the same subject matter i.e. Quarter no. 26. The second suit has been instituted on the allegation that the defendants have illegally taken possession of a property which is adjacent to the Quarter no. 26 by breaking of locks.

In the second suit which is the present suit, plaintiff is seeking possession not of Quarter no. 26, but of the property of which the defendants allegedly obtained illegal possession by breaking open the plaintiff's lock.

As such, the cause of action and the matters in issue in both the suits are not the same and are different.

The submission of the Ld. Counsel for the defendants that the averment with regard to the unauthorized construction carried out over the common toilets find mention in the first suit is irrelevant. Even if in the first suit, the plaintiff has mentioned that the defendants had carried out certain unauthorized construction over the common toilets, the same is not a matter in issue in the first suit since the relief sought in the first suit is not qua this unauthorized construction.

In view of these observations, the application under Section 10 r/w Section 151 CPC is dismissed.

Now the application of the defendant under Section 50 of the Delhi Rent Control Act r/w Order 7 Rule 11 and Section 151 of CPC is taken up for consideration.

As has already been observed hereinabove, the cause of action for which the present suit has been instituted is the alleged trespassing of the defendants over the common toilet.

The present suit is not for recovery of tenanted premises.

The present application under Section 50 of the Delhi Rent Control Act r/w Order 7 Rule 11 and Section 151 of CPC is misconceived and is accordingly dismissed.

Let replication be filed within 30 days from today after supplying advance copy to the Ld. Counsel for the defendant.

Let affidavits of admission and denial of documents and proposed issues be filed by the next date of hearing after supplying advance copy to the opposite party atleast 15 days prior to the next date of hearing.

To come up for framing of issues on 15.01.2025.

(Shirish Aggarwal)
District Judge-03
Patiala House Courts, New Delhi
19.09.2024