

RAJINDER SINGH Vs. JAGDISH SINGH & ORS.

28/11/2025

Present : Sh. Avdhesh Kumar, Ld. Counsel for plaintiff.
Sh. Som Dutt Sharma, Ld. Counsel for defendants
through VC.

1. Ld. Counsel for plaintiff has filed an application under Order 22 Rule 3 CPC to bring on record Legal Heirs of defendant no. 7. Copy supplied to Sh Jagdish Singh who is present in the Court.

2. Issue Notice of the application to the LRs of deceased defendant no. 7 as mentioned in Para No. 4 of the application for the next date of hearing on filing of PF/RC by the plaintiff.

**Order on application under Section 10 CPC filed on behalf of
defendant no. 1**

3. Ld. Counsel for defendants no. 1 presses his application dated 05/12/2024 for stay of proceedings in present suit in view of Section 10 CPC.

4. Ld. Counsel for defendant no. 1 argues that predecessor in interest of defendant no. 1 i.e. Late Sh. Sahi Ram had filed suit for declaration, possession and mesne profits (herein after called declaratory suit) in 1971 against Sh. Jile Singh for getting declared owner of property bearing no. B – 5/1, Model

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Town, Delhi. Sh. Rajender Singh who is plaintiff in the present case had also contested the previous suit filed by Late Sh. Sahi Ram. This suit was decreed in the year, 2018. RCA DJ No. 25/18 is pending before this Court. In the present suit(herein after called partition suit), the prayer is for partition of properties including B – 5/1, Model Town, Delhi and thus, the present suit is liable to be stayed under Section 10 CPC.

5. Ld. Counsel for defendant no. 1 relies upon case titled as *“National Institute Of Mental Health & Neuro Sciences Vs. C. Parameshwara”, (2005) 2 SCC 256 in CA No. 8038/2004, decided on 13th December, 2004 by Hon’ble Supreme Court of India* to contend that when whole of the subject matter in both the proceedings is identical then Section 10 applies.

6. Per contra, Ld. Counsel for plaintiff has argued that preliminary issue no. 3 regarding whether the present suit is liable to be stayed under Section 10 CPC? OPD, was framed on 01/02/2018. It was observed in order dated 01/02/2018 as as under :-

“01.02.2018

Present : Sh. Avdesh Kumar, Ld. Counsel for plaintiff.
Sh. Rahul Verma, Ld. Counsel for defendants no. 1 to 8.
None for remaining defendants.

A preliminary issue was framed on 28/04/2009 and since then matter is pending before

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this Court for last so many years. It is submitted by Ld. Counsel for defendant that the earlier suit has already been decreed in one of the property and present suit relates to three properties.

It is submitted by both the Counsels that the preliminary issues which was framed earlier is a mixed question of facts and law and all issues be framed so that matter can be proceeded and trial can commence.

Heard. Issue framed on 28/04/2009 be re-framed and be decided alongwith other issues.

Pleadings are complete. Parties are not interested to go for admission and denial of documents.

Upon pleadings of the parties, following issues are framed :

1. Whether the plaintiff is entitled for partition in equal shares to the extent of 1/4th share each in the property as mentioned in the plaint? OPP.
2. Whether the plaintiff is entitled for permanent injunction and against the defendants? OPP.
3. Whether the suit is liable to be stayed /s 10 CPC? OPP.
4. Relief.

Put up for **PE on 09.05.2018**. List of witnesses be filed within stipulated period. Ld. Counsel for the plaintiff is directed to supply the advance copy of the affidavit of evidence to the defendants at least 7 days prior to the next date of hearing.”

7. It is further argued by Ld. Counsel for plaintiff that requisite conditions for stay of suit under Section 10 CPC have not been met.

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8. Heard. File perused.

9. The submission on behalf of defendant no. 1 that predecessor in interest of defendant no. 1 i.e. Late Sh. Sahi Ram had filed suit for declaration, possession and mesne profits (herein after called declaratory suit) in 1971 against Sh. Jile Singh for getting declared owner of property bearing no. B – 5/1, Model Town, Delhi. Sh. Rajender Singh who is plaintiff in the present case had also contested the previous suit filed by Late Sh. Sahi Ram. This suit was decreed in the year, 2018. RCA DJ No. 25/18 is pending before this Court. In the present suit (herein-after called partition suit), the prayer is for partition of properties including B – 5/1, Model Town, Delhi and thus, the present suit is liable to be stayed under Section 10 CPC is without merits. This submission is rejected. For reasons in paragraphs to follow.

10. There is no dispute with the proposition of law laid down in case titled as ***“National Institute Of Mental Health & Neuro Sciences Vs. C. Parameshwara”, (2005) 2 SCC 256 in CA No. 8038/2004, decided on 13th December, 2004 by Hon’ble Supreme Court of India*** wherein it has been held that when whole of the subject matter in both the proceedings is identical then Section 10 applies. However, the facts of the present case are

distinguishable from the facts of the case before Hon'ble Supreme Court of India. In the present partition suit, there are additional

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properties as stated in Para No. 2 of the plaint itself i.e. constructed house/plots situated at Village- Barwala. Thus, Section 10 CPC does not apply.

11. The submission on behalf of plaintiff that preliminary issue no. 3 regarding whether the present suit is liable to be stayed under Section 10 CPC? OPD, was framed on 01/02/2018 and this order has attained finality is factually correct. However, this Court deems it appropriate to decide the present application at this stage itself as question of stay of present suit is involved.

12. Section 10 of Code of Civil Procedure would apply only where the whole subject matter in both the proceedings is identical. In the present case, additional Barwala properties are involved, so subject matter is not identical.

13. Section 10 CPC prevents the trial of a suit in a matter regarding which there is already a case pending in a court of competent jurisdiction. The Court where declaratory suit was pending was not competent to grant relief sought for in partition suit. Thus, Section 10 CPC does not apply.

14. Section 10 of the CPC is a somewhat drastic provision, in as much as it brings the trial in the later suit to a complete halt. It

eviscerates, therefore, in a manner of speaking, the right of the litigant to expeditious trial. The corridors of the court not being the most habitable of places, where one would choose to linger long,

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Section 10 is required to be construed strictly, (reliance is placed upon case titled as Amita Vashisht Versus Tarun VEDI decided by Hon'ble High Court Of Delhi At New Delhi on SEPTEMBER 16, 2022).

15. The cause of action in both the suits cannot be said to be same. First suit is for declaration. Second suit is for partition on different cause of action. Additional properties are involved in partition suit. Merely because one of the properties in partition suit was subject matter of previous suit for declaration cannot be a ground to stay partition suit involving additional properties.

16. **The application under Section 10 CPC filed by defendant no. 1 dated 05/12/2024 is dismissed.**

17. Now, to come up for report of service upon defendant no. 7 on 17/02/2026.

(VIKRAM BALI)
DISTRICT JUDGE-02/NORTH/ROHINI
DELHI/28/11/2025