

15 CS DJ 591/25

JAIRAJ DEVELOPERS LLP VS. ALKA N SOMANI

19.11.2025

Present: Mr. Jatin Julka, Ld. Counsel for plaintiff.
Mr. Bipin Bihari Singh, Ld. Counsel for defendant through V.C.
Ms. Mahua Bose, Ld. Proxy Counsel for defendant.

Defendant's application under Order III Rule 3(A) read with Section 151 CPC:

1. The defendant is seeking prosecution of her defence through her husband as POA holder.
 2. Heard, perused and considered.
 3. This application is not being opposed from plaintiff's side.
 4. For the reasons stated, this application is allowed.
- However, it is made clear that as per the law defendant's POA holder cannot depose and prove facts in the personal knowledge of the defendant.

Defendant's application under Order I Rule 10 CPC:

5. As per the index, this application has been stated to have been filed under Order I Rule 10 CPC. However, the application has actually been filed under Section 10 of the CPC. Ld. Counsel for the defendant submits that it was a typographical error that the application has been mentioned under wrong provision in the index and that the application may be treated under Section 10 CPC only. Ordered so.
6. Plaintiff's Counsel submits that he would address the submissions in opposition to this application without filing a formal reply.

7. Heard, perused and considered.

8. The defendant is seeking stay upon this suit till the disposal of her suit, CS DJ 3430/2024, which is stated to be pending before the Court of Ld. DJ-01, District South East, Saket Courts, New Delhi.

9. Ld. Counsel for the defendant submitted that the matter in issue in the present suit is also involved in defendant's aforesaid previous suit. He submitted that the defendant has filed the aforesaid suit mainly for the relief of declaration that the defendant has ownership rights in two floors including the right to raise construction on the 3rd floor of the property bearing no. 18, R Block, G.K.-I, New Delhi. He submitted that the defendant's aforesaid previous suit has been filed against one, Ankur Arora as defendant. He submitted that it was later on that the defendant came to know that the other floors in the said property are not owned by aforesaid Ankur Arora, but by M/s Jairaj Developers LLP, which is plaintiff in the present suit. He submitted that the defendant has already filed an application under Order I Rule 10 CPC in her aforesaid previous suit therein seeking impleadment of M/s Jairaj Developers LLP. He also submitted that M/s Jairaj Developers LLP has deliberately been avoiding the service of notice issued in respect of her aforesaid application under Order I Rule 10 CPC. Ld. Counsel then submitted that M/s Jairaj Developers LLP as plaintiff has filed this suit for seeking declaration that it is the owner of three floors in the aforesaid property and that the defendant is only the owner of 2nd floor without right to raise construction on the terrace. Lastly, he submitted that the matter in issue in both the suits being same there is a possibility of conflicting Judgments and, therefore, the present suit, which has been filed subsequent to defendant's aforesaid suit, may be

stayed under Section 10 of the CPC.

10. *Per contra*, Ld. Counsel for the plaintiff is opposing this application on the ground that the parties in both the suits admittedly are not the same. He submitted that the plaintiff in the present suit i.e. M/s Jairaj Developers LLP has not been impleaded in defendant's aforesaid suit till date. Ld. Counsel submitted that one of the necessary conditions for the applicability of the principal of *subjudice* as contained under Section 10 of the CPC is that parties in both the suits should be the same.

11. The relevant provision i.e. Section 10 of the CPC reads as under:

'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 have jurisdiction to grant the relief claimed, or in any Court beyond the limits of 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 from trying a suit founded on the same cause of action.

12. Section 10 declares that no Court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the Court before which the previously instituted suit is pending is competent to grant the relief sought. Thus, the object of the Rule

contained in Section 10 is to prevent two Courts from simultaneously entertaining and adjudicating upon two parallel litigation in respect of the same cause of action, the same subject matter and the same relief. The idea is to also obviate the possibility of two contradictory decisions in respect of the same manner.

13. The important words in Section 10 are “the matter in issue is directly and substantially in issue in a previously instituted suit”. Hence, when the matter in controversy is the same, then only Section 10 applies. When, it is different, the Section has no application. The question as to what matter is in issue in the former suit and in the subsequent suit has to be determined with reference to the pleadings and reliefs sought in the two suits. No rule of universal application can be laid down and the question should be decided on the facts of each case. The Supreme Court in *Mathura Prasad v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613, has observed that the expression “matter in issue” means the rights litigated between the parties, i.e. the facts on which the right is claimed and the law applicable to the determination of that issue. Issues are of three kinds: (i) issue of fact; (ii) issue of law; and (iii) mixed issue of law and fact. The subject of framing of issues has been dealt with under Order 14 of CPC. Order 14 Rule 1(1) CPC provides that issue arises when a material proposition of fact, or law is affirmed by one party and denied by the opposite party. The material propositions, as per Order 14 Rule 1(2) CPC, are those propositions of law and fact, which a plaintiff must alleged in order to show a right to sue, or a defendant must allege in order to constitute his defence.

14. One of the matters in issue in the present suit is whether or not the defendant has any ownership right over terrace of the 2nd floor

and/or the right to raise construction thereupon. The defendant herein in her previous suit is seeking the declaration that she is the owner of two floors in the building including the right to raise construction on the 3rd floor i.e. over the terrace of 2nd floor. Thus, the matter in issue in both the suits are same. Parties in both the suits are claiming to be the owners of different portions in the same property. They are, therefore, litigating under the same title.

15. However, the plaintiff in the present suit having not been impleaded as defendant in defendant's aforesaid previous suit, it cannot be said that parties in both the suits are same. It is noted that one of the necessary conditions for the applicability of bar of Section 10 of the CPC is that parties in both the suits should be the same, which is not the case in the present matter.

16. It is also important to note here that Section 10 applies to trial of the suit, and not to the institution of the suit. It also does not preclude a Court from passing interim Orders, such as, grant of injunction, or stay, appointment of receiver etc. The Supreme Court in *Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.*, MANU/SC/0350/1998, has held that the trial in a suit starts after framing of issues. The Supreme Court in *Pukhraj D. Jain and Ors. v. G. Gopalkrishana*, MANU/SC/0364/2004, has held that Section 10 does not take away power of the Court to examine the merits of the matter. If the Court is satisfied that subsequent suit can be decided purely on legal point, it is open to the Court to decide such suit.

17. The present suit still at its pre-trial stage. There is no impediment in proceeding further and framing the issues.

18. The trial of the present suit having not commenced till date,

the question of stay of the same under Section 10 of the CPC does not arise at present.

19. In view of the above, the application under consideration is dismissed.

20. Written statement and reply to plaintiff's application under Order XXXIX Rule 1 and 2 CPC on behalf of the defendant be filed within 30 days from today with advance copies to the plaintiff/Ld. Counsel. Replication, thereafter, may be filed within 15 days with advance copy to the defendant/Ld. Counsel.

21. Both parties are directed to : (i) file affidavit of admission/denial of documents; and (ii) bring original documents on the next date of hearing.

22. List on **10.02.2026** for completion of pleading, admission/denial of documents and for framing of issues.

(Sachin Mittal)
DJ-03/South-East District
Saket Courts, New Delhi/19.11.2025