

1. IN THE COURT OF SH. MOHD. FARRUKH
2. ADDITIONAL DISTRICT JUDGE :PILOT COURT
3. DWARKA COURT
4. NEW DELHI

5.

6. Civil Suit No: 656/2017

7.

8. IN THE MATTER OF

9.

10.

11. Nirmala Gupta

12.

13....Plaintiff

14.

versus

15.

16. Rajesh Kumar Garg & Ors.

17.

18.

...Defendants

19. Date on which order was reserved: 27.09.2017

20. Date on which order was passed: 31.10.2017

21.

22. ORDER

23.

1. Vide this order I shall dispose of an application filed by defendant nos. 1 & 2 under section 10 of Code of Civil Procedure for stay of present suit.

2. Brief facts necessary for the disposal of the present

application are that the plaintiff filed the present suit for declaration, possession and damages/mesne profits etc. averring *inter alia* that the plaintiff purchased one flat on the first floor (back side) on the plot No.RZ-88, Manaskunj, Uttam Nagar, Delhi (hereinafter referred to as suit property), the sale deed for the same was to be registered by the defendant nos.1 & 2 in the name of plaintiff, which was agreed to even by the defendant nos.1 & 2. Accordingly, the sale deed of the said first floor flat was got registered in the name of the plaintiff on 02.05.2014 and thereafter, the plaintiff took possession of the flat in question, however, on 20.05.2015 when the plaintiff visited the suit property, it was revealed that defendant nos.3 & 4 in connivance and conspiracy with defendant nos.1 & 2 have forcibly and illegally taken possession of the flat in question by changing the locks which the plaintiff had put on her flat. It was further averred that the plaintiff received the summons from the

court of Ld. Civil Judge revealing that defendant no.2 had filed a suit for declaration, permanent injunction and rectification of the sale deed and the said suit is pending in the court of Ld. Civil Judge in which issues have been framed and the suit was fixed for plaintiff's evidence.

3. On the service of the summons of the present suit, the defendant nos.3 & 4 filed their joint written statement claiming to be bonafide purchasers of the suit property and consequently in lawful possession of the same. Defendant nos.1 & 2 preferred to file the present application under Section 10 read with Section 151 CPC averring *inter alia* that since defendant no.2 has already instituted a civil suit titled as *Bindu Garg vs. Nirmala Gupta*, bearing No.CS/SCJ/176/2015 pending in the court of Ms. Neeti Suri Mishra, Civil Judge, Dwarka Court, New Delhi against the plaintiff seeking relief of declaration to the effect that defendant no.2 has only sold and

conveyed the flat on the back side of upper ground floor admeasuirng 50 sq.yds. situated in the residential property bearing no.88 at khasra no.62,64, 72 & 74 of the revenue estate of village bindapur to the present plaintiff and the plaintiff in the present suit does not have any right, title or interest in the flat on the back side of the first floor in the residential property bearing no.88 at khasra no.62,64, 72 & 74 of the revenue estate of village Bindapur now known as Mansakunj, South Uttam Nagar, New Delhi-110059 (present suit property) and the plaintiff does not have any right, title or interest in the suit property and therefore seeking a decree for rectification of the Sale deed, the present suit is required to be stayed under Section 10 read with Section 151 CPC.

4. Reply to the present application has been filed by the plaintiff contending *inter alia* that the present application of defendant nos.1 & 2 is not maintainable as the suit

filed by defendant no.2 pending before Ld. Civil Judge is for declaration and permanent injunction with consequential relief of rectification of registered Sale Deed which was executed by defendant no.2 in favour of the plaintiff, whereas by way of the present suit, the plaintiff is seeking relief of declaration, possession, damages, occupational charges/mesne profits, permanent injunction etc. It is further contended that in the present suit besides the right of the plaintiff qua defendant No. 1&2, right, title and interest of defendant nos.3 & 4 qua their sale deed are also to be adjudicated and therefore matters in issue between two suits are entirely different and thus prayed for dismissal of the present application.

5. I have heard arguments from both sides and perused the record as well as the written arguments submitted on behalf of the plaintiff. I have also given my thoughtful

consideration to the judgments relied upon by both the parties.

6. Admittedly, earlier suit instituted by defendant no.2 pertains to the rectification of the sale deed to the effect that defendant no.2 has sold and conveyed the flat on the back side of upper ground floor admeasuring 50 sq.yds. situated in the residential property bearing no.88 at khasra no.62,64, 72 & 74 of the revenue estate of village Bindapur to the present plaintiff and not the suit property while in the present suit, the plaintiff is claiming the declaration and possession of the suit property from defendants. On the perusal of the pleadings of the parties, it transpires that the issue, that is, under adjudication is in respect of identification of the flat in respect of which, the sale deed has been executed in favour of the plaintiff and the allegation and counter allegation leveled against each other are incidentally

common in both the suits, however, the matter ends there as both the parties are claiming the relief against each other in their respective suits. Moreover, the plaintiff in the present suit has also arrayed defendant nos.3 & 4 as parties who stated to have been bonafidely purchased the suit property.

7. 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.

8. The aforesaid section provides that where a suit is instituted in a court, such court shall not proceed with the trial of the suit if the questions in controversy in the suit are also directly and substantially in issue in the previously instituted suit between the same parties. Further, it is provided that the previously instituted suit must be pending in the same Court in which the subsequent suit is brought or in a Court having jurisdiction to grant relief claimed in the subsequent suit. The object of this section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits relating to same questions in dispute. This section does not contain any reference either to the subject-matter or to the cause of action and the test for applicability of this section is whether on the final decision being reached in

the previous suit, such decision would operate as res-judicata in the subsequent suit. If the said principle is applied in the instant case, it is clear that barring some issues such as the adjudication of severance status between the plaintiff and defendant, both parties are at different tangent to each other claiming relief against each other and adjudication in previously instituted suit will not operate res judicata in the present suit. In ***National Institute of Mental Health and Neuro Sciences v. C. Parameshwara***, (2005) 2 SCC 256, it has been held as follows:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 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. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. **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 cases where the whole of the subject-matter in both the suits is identical. The key words in**

Section 10 are "the matter 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 the whole of the subject-matter in both the proceedings is identical."

(emphasis supplied)

31.9. In view of aforesaid settled law , it is candid that any matter common to the two suits will not attract the provisions of section 10 of CPC; the matter must be of substance, so that its decision in one suit shall affect materially the decision of the other suit.

32.

33.10. The judgment relied upon by defendant no.2 are not applicable to the facts and circumstances of the present case.

34.

35.11. In view of the aforesaid facts and settled law, the present suit filed by the plaintiff cannot be stayed and application under Section 10 read with Section 151 CPC filed by defendant no.1 & 2 stands dismissed.

36. *Announced in the open court on this 31st day of October, 2017*

37. *This order consists of twelve signed pages.*

38.

(MOHD. FARRUKH)

**39. ADDITIONAL DISTRICT JUDGE: PILOT COUR
DWARKA COURT:DELHI(an)**