

**IN THE COURT OF SH SHIV KUMAR
DISTRICT JUDGE-02 (WEST),
TIS HAZARI COURTS, DELHI**

**Civ DJ No. 415/2020
CNR NO. DLWT01-003969-2020**

Gurvinder Singh Chadha

Plaintiff

Vs.

Ajit Singh Chadha

Defendant

ORDER ON PRELIMINARY ISSUE NO. 6

1. Vide this order, I shall decide preliminary issue no. 6, which has been framed on 21.04.2023 and the same is as under:-

“ Whether the suit is not maintainable since the question of validity of the Will dated 22.01.2019 is pending adjudication before the Hon’ble High Court where a probate petition has been filed by the present plaintiff in respect of the said Will and hence whether the present suit is liable to be stayed u/s 10 of the CPC?

2. Ld. Counsel for the defendant submitted that the present suit is liable to be stayed in view of the Probate petition regarding Will in question, pending before Hon'ble High Court of Delhi. On 05.08.2024, ld. Counsel for the defendant has submitted that issues have not yet been framed in the Probate petition. Ld. Counsel for the defendant has also filed some judgments which are as follows:

- i) Kanta Yadav Vs Om Prakash Yadav & Ors. SLP (Civil) No. 19096 of 2017 SC
- ii) Smt. Satula Devi Vs Mr. Rajeev Sharma & Ors, CS(OS) 203/2022, High court of Delhi, decided on 10.04.2023.
- iii) Aspi Jal & Anr. Vs Khushroo Rustom Dadyburjor, AIR2013, Supreme Court of India

3. It is further averred by ld. Counsel for the defendant that issues in both the suits are substantially similar and have bearing on the outcome of the present case.

4. Per contra ld. Counsel for the plaintiff submits that the issues in Probate petition and present case are different. He further argued that in the present case, six issues have been framed whereas in the Probate Petition, only issue no. 5 is required to be framed. He further argued that if one of the issue is common in both cases, then only on that ground the present suit cannot be stayed.

5. Arguments heard. Case file perused. The judgments relied upon by Id. Counsel for the defendant have been duly considered while passing this order.

6. Section 10 of the CPC states as follows;-

‘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]’.

7. In a case titled Paminder Gujral & Ors vs Kiranjit Gujral & Ors. in IA No. 5138/2018 in CS(OS) 3262/2012, decided on 19.07.2023, the Hon’ble High Court of Delhi has enumerated the essential ingredients for allowing the application and staying the proceedings under Section 10 of the CPC which are as follows:

- i) There must be two suits;
- ii) The parties in both the suits must be same and are litigating under the same title;

- iii) The matter in the issue in both suits should be directly and substantially the same;
- iv) The previously instituted suit must be pending.

8. For the defendant to succeed in his claim, the aforesaid essential ingredients need to be satisfied. For the same, it is important for this court to examine whether the matter directly or substantially in issue in the present civil suit, is also directly and substantially in issue in Probate Case pending before the Hon'ble High Court of Delhi. The defendant has to further satisfy this court that the probate petition has been instituted in the Hon'ble High Court of Delhi before filing of the present suit.

9. As per judgment passed by Hon'ble High Court of Delhi titled as Amita Vashisht vs Tarun Bedi, decided on 16.09.2022, Section 10 of CPC would apply only if there is identity of the matter in issues in both the suits meaning thereby that the whole of the subject matter in both the proceedings is identical.

10. In a judgment titled Aspi Jal & Anr. Vs Khushroo Rustam Dadyburjor AIR 2013, Supreme Court, 1712, relied upon by the ld. Counsel for the defendant, the Hon'ble Supreme Court of India, has observed as follows:

*“ As observed earlier, for application of
Section 10 of the Code, the matter in issue*

in both the suits have to be directly and substantially in issue in the previous suit but the question is what” the matter in issue” exactly means? As in the present case, many of the matters in issues are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matter in issue are common and will apply only when the entire subject matter in controversy is same.”

11. All the issues in the present suit and probate case are not same. In the present case the plaintiff is seeking ownership alongwith decree of possession and decree of rent from the defendant. Plaintiff is also seeking decree for permanent and mandatory injunction against the defendant.

12. In the probate petition, the petitioner (who is plaintiff in the present case) has prayed to the Hon’ble High Court of Delhi to issue letters of administration in respect of the Will dated 22.01.2019 executed by late Sh. Inder Singh Chawla. It is settled law that if one of the issues is common in two suits then only on ground of that common issue, the subsequent suit cannot be stayed. From the above said facts, it is established that issues in

both cases are different and only issue no. 5 is common in both cases.

13. As per copy of probate petition filed by defendant, the probate petition has been filed before Hon'ble High Court of Delhi on or after 21.05.2022 as the copy of the probate petition bears the date 21.05.2022. The present suit has been filed on 17.09.2020 and it has been filed before the filing of the Probate Petition. As per section 10 CPC, only subsequent suit can be stayed, therefore, section 10 CPC is not applicable in this case.

14. In view of the foregoing discussions, the issue no. 6 is decided against the defendant and in favour of the plaintiff.

**Announced in the open court on
23rd September, 2024**

**(SHIV KUMAR)
DJ-02, WEST
TIS HAZARI COURT
DELHI**