

Civ DJ 419/22

GURBIR SINGH Vs. JASMINE KAUR AND ORS

09.02.2024

Present: None for plaintiff.

Sister of defendant no.1.

Vide this order, this Court shall decide the preliminary issue regarding the applicability of Section 10 CPC in present case.

Arguments have already been heard. Record perused.

In this matter, vide order dated 14.08.2023 issues were framed and issue no.5 was framed as following:

“Issue No.5 : Whether suit is barred by Section 10 of CPC, as claimed by defendant? OPD”

Said issue was treated as preliminary issue.

Brief facts of the case relevant for deciding the present issue are that present suit has been filed by plaintiff against defendants seeking the relief of possession, *mesne* profits and permanent injunction. As per case of plaintiff, he is owner of basement and ground floor of property bearing no.37, West Avenue Road, Punjabi Bagh, New Delhi. It is submitted that marriage of plaintiff's son Sh.Raminder Singh was solemnized with defendant no.1 in the year 2004 and defendant no.2 & 3 are minor daughters of defendant no.1 and plaintiff's son Raminder Singh. It is submitted that two room set with attached bathroom on the rear side of ground floor of property

bearing no. 37, West Avenue Road, Punjabi Bagh, New Delhi was given by plaintiff in the possession of defendant no.1 and plaintiff's son Raminder Singh as a permissive user and they started residing in the same. It is submitted that plaintiff's son Sh. Raminder Singh passed away on 11.12.2021. It is submitted that defendant no.1 harasses, threatens the plaintiff, his wife and daughter despite the fact that she has no legal right to live in the property, so plaintiff by way of legal notice dated 16.04.2022 withdrew the permission of permissive use granted to defendants and now they have no right to reside in said property. Present suit has been filed by plaintiff against defendants seeking the possession of two room set with attached bathroom on the rear side of ground floor of property bearing no. 37, West Avenue Road, Punjabi Bagh, New Delhi (which is in the possession of defendants). Plaintiff has sought further relief for damages / *mesne* profits qua said property and also sought permanent injunction to restrain the defendants from creating third party interest in the same.

In their written statement, defendants have taken the plea that present suit is barred under Section 10 CPC in view of the previously instituted suit bearing CS No.4/2022 pending in the Court of learned Additional Principal Judge (Family Court), West, Tis Hazari Courts, Delhi.

Parties were directed to file on record the pleadings of said previous suit and pleadings were filed in the present suit. Perusal of the same shows that said suit has been filed by defendant no.1 in

present suit against plaintiff in present suit and his wife. Perusal of record also shows that defendant no.1 in the present suit has sought the relief of permanent injunction in said previous suit against plaintiff in the present suit and his wife and it has been prayed that they be restrained from dispossessing the defendants in the present suit from property bearing no. 37, West Avenue Road, Punjabi Bagh, New Delhi and they be further restrained from creating third party interest in the same.

As per Section 10 of CPC “*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.”*

This Court is of the considered view that plaintiff in the present suit is a defendant in previous suit, however, he has not filed any counter claim in previous suit and has not sought the reliefs, which are being sought in the present suit. Although suit property in the

present suit is also involved in the previous suit, however, still Section 10 of CPC is not applicable in the present suit as reliefs which have been asked in the present suit are not in issue in the previous suit. Section 10 is applicable only in case where whole of the subject matter in both the suits is identical, however, same is not present in present case. Accordingly, this issue is decided in favour of plaintiff and against the defendants.

Matter be put up for PE for next date of hearing. Advance copy of affidavit of PW(s) be supplied to other side. Both parties are also directed to file list of witnesses.

Put up on **23.04.2024**.

Announced in the open Court  
this 09<sup>th</sup> day of February, 2024.

(Dharmender Singh)  
Additional District Judge-01(West)  
Tis Hazari Courts, Delhi