

ORDER BELOW EXH-48 IN
RCS No.11/2025,

The present application is filed by defendant under Section 10 and 151 of the Civil Procedure Code for stay of second suit RCS No.860/2025 pending before the Court of 2nd Jt. Civil Judge, Junior Division.

2. Perused the application as well as say. Heard the learned Advocate for plaintiff. Repeatedly called learned Advocate for defendant but, absent. By present application the defendant seek to stay of the present suit under Section 10 r/w Section 151 of the CPC along with the stay of other suit RCS No.860/2025 pending before the Court of 2nd Jt. Civil Judge, Junior Division contending that another suit between the parties in respect of same property is pending and therefore present proceedings are barred. According to defendants, parties and subject matter in both the suit are identical and continuation of present would result in multiplicity of proceedings. Per contra, plaintiffs have strongly opposed the application contending that the present application is not tenable. Section 10 of CPC is not attracted in the present case. The application is wholly misconceived, untenable in law and facts and liable to be rejected. The subsequent suit i.e. RCS No.860/2025 is based on separate, subsequent and distinct cause of action which is later in the date.

3. Considered pleadings and arguments. Section 10 of CPC mandates stay of a suit only when the matter is in issue

is directly and substantially the same in a previously instituted suit between the same parties pending before a competent Court. On careful perusal of the pleadings it is evident that the present suit i.e. RCS No.11/2025 is previously instituted suit i.e. 13/01/2025 whereas other suit I.e. RCS No.860/2025 is subsequent suit i.e. 05/11/2025. Taking legal analogy of provision under Section 10 of the Civil Procedure Code the suit which is subsequently filed is liable to be stayed if conditions mentioned under Section 10 of the CPC are fulfilled. Apparently;y the present suit RCS No.11/2025 appears to be filed previous to other suit. Moreover, the cause of action for institution of subsequent suit is different from that of present suit. It is well settled that Section 10 of CPC does not apply merely because the parties and properties are identical. The matter must be directly and substantially in issue which is clearly absent in the present suit. The law does not prohibit for filing a fresh suit when a new and independent cause of action arises. So also the inherent powers under Section 151 of the CPC can not be exercised in a manner contrary to the express provision of law. When the statutory requirements of Section 10 of CPC are not fulfilled the suit can not be staying by invoking inherent power. The more important fact to be mentioned is that the one Court of same designation does not have controlled over the suit pending before the other Court. The application appears to have been filed with an intention to delay the adjudication of the injunction application and to continue the alleged unlawful acts on the suit property. In this backdrop, I pass following order;-

ORDER

1. Application at Exh.48 is rejected.
2. The Court shall proceed with the consideration of injunction application on merits.
3. Parties to take note of it.

Date : 27/01/2026.

(S.S. Agrawal)
Jt. Civil Judge J.D., Gangapur
Tq. Gangapur.