

R.C.S. No. 816/2016

Narhari V/s. Pratiksha

ORDER BELOW EXH. 24

1. This is an application filed by defendant No. 1 with prayer to stay the proceeding of this suit under Sec.10 of The Code Of Civil Procedure (In short hereinafter referred as C.P.C.).

2. As per the defendant, the plaintiffs have instituted this suit on 23-12-2016 with specific prayer of declaration of ownership and perpetual injunction with respect to the suit properties comprised in Sy. No. 96, 97, 112/3, 148/1, 149/1, 76/2, 76/3 and 76/4. However, defendant No. 1 in the present suit, on 08-03-2016 has earlier instituted Special Civil Suit No. 04/2016 in the court of Civil Judge Senior Division, Ahmedpur, and both the suits at present are pending.

3. The parties in both the suit are same apart from that, the matter in issue pending in these two suits is also same. Thus, to avoid the conflicting judgments by both the courts, the instant suit is required to be stayed. Hence, the present application is filed.

4. The plaintiffs have objected the application by filing their say on the overleaf of application. As per the plaintiffs, the properties in both the suits are different, parties are different. The prayers in both the suits are also different. Thus, the application does not come within the purview of Section 10 of The C.P.C. Apart from that, the instant application is filed only by defendant No. 1. Therefore, the same is not tenable in the eyes of law. Hence, the plaintiffs prayed to reject the application.

5. Heard both sides.

6. Perusal of the record it appears that, the instant suit is filed on 23/12/2016 and Special Civil Suit No-04/2016 is filed on 08/03/2016. This makes it clear that the instant suit is a subsequent suit. The present suit is filed in respect of suit properties comprised in Sy. No. 96, 97, 112/3, 148/1, 149/1, 76/2, 76/3 and 76/4 with a specific prayer of declaration of ownership and perpetual injunction. Through this suit the plaintiffs are requesting the court to declare them as owner of the suit property.

7. On the contrary, Special Civil Suit No. 04/2016 appears to have filed in respect of properties comprised in Sy. No. 96, 97, 112/3, 148/1, 149/1, 277/1, 273, 76/3, 76/2, 76/4 and three houses situated at Ahmedpur bearing their Nos. E-49, E-48, E-43-1, E-50-1 and E-50 along with One house situated in L.I.C. Colony at Latur bearing house No. R/9/118/60; With a specific prayer to allot her 6/125th share in the mentioned suit properties along with separate possession. Apart from that, the Special Civil Suit No. 04/16 is filed with additional prayer to declare the adoption deed and release deed allegedly executed as null and void.

8. The plaintiffs in both the suit denotes that, there are six parties who are joined as defendants in the instant suit. On the contrary, in the Special Civil Suit, there are 15 parties who are joined as defendants. It appears that, the parties and properties in both the suits are different. Even though, no specific prayer is claimed against defendants No. 4 and 6 in the instant suit, they are not joined as a party in the Special Civil Suit and certain other parties who are defendants in the Special Civil Suit are not made party to the instant suit. Even if, the instant suit is decreed, the

judgment in the suit would not affect the result of prayers made in the Special Civil Suit. Because, even the plaintiffs in this suit are declared as owners in respect of suit properties limited to this suit, that does not preclude defendant No. 1 to claim her share in the suit properties comprised in the instant suit.

9. The provision under Section 10 come into force only when the required criteria pertaining to parties, properties and matter in issue it is satisfied. However, the instant suit no such criteria is fulfilled. The Hon'ble Supreme Court In National Institute of Mental Health & Neuro Sciences v/s C. Parameshwara reported in MANU/SC/1063/2004, has held as under :-

“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.”

10. Apart from that, the Hon'ble Bombay High Court In Sadguru Constructions and another V/s. Smt. Jaimeet Kaur Nirman Singh Sial and others reported in 2006(2) MhLJ 794 held that :-

“It is not in dispute that prayers which are made in the present suit are much larger including the 1/4 th of the

total share of deceased in the partnership firm. It is also not in dispute that the suit is also filed for accounts by the respondent No. 1 whereas in the first suit no such reliefs are sought. The issue as to the accounts of the deceased partner in the firm of petitioner is not a subject matter of the issue in the first suit. Thus, it cannot be said that relief sought and/or issue involved in both the suits are identical and therefore the second suit should be stayed under Section 10 of The Civil Procedure Code".

11. Considering the ratio laid down above it is clear that if subject matter in both the suits is identical then only the application under S. 10 is maintainable. No doubt in the case in hand there is a difference in between the parties, properties and that to in final reliefs. The matter in issue in both the suits is different. Therefore, the provisions under S.10 of C.P.C. are not attracted, in the result this application is not maintainable, hence, I proceed to pass the following order-

ORDER

1. The application (Exh.23) is rejected.
2. In the peculiar facts and circumstances of the suit there is no order as to cost.

Dt- 23-08-2018.

(Amol Bharat Jawale)
3rd Jt. Civil Judge, J.D.
Ahmedpur.