

(1971) 07 KAR CK 0010

In the Karnataka High Court

Case No : Civil Revision Petition No. 1727 of 1970

Channabasappa Kamadal and Sons

APPELLANT

Vs

Kishan Chand and Co. and Others

RESPONDENT

Date of Decision : 08-07-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : AIR 1972 Kar 112 : (1971) 2 MysLJ 449

Hon'ble Judges : H.B. Datar, J

Bench : Single Bench

Advocate : T. Venkanna, for the Appellant; M.R. Narasimha Murthy, for the Respondent

Final Decision : Dismissed

Judgement

H.B. Datar, J.—Plaintiff in Original Suit No. 202 of 1969 pending in the court of the Munsiff at Arsikere is the petitioner in this revision petition and challenges the correctness of the order passed by the Munsiff at Arsikere staying the hearing of the suit until the disposal of the suit filed before the Senior Sub Judge's Court. Delhi.

2. The plaintiff has filed a suit for recovery of a sum of Rs. 4,977-47 P. as damages for breach of contract to supply and purchase the cocoanuts by the defendants. The defendants in this suit have also filed a similar suit against the plaintiff in the court of Senior Sub Judge at Delhi to recover the sum of Rupees 13.279-85. The suit filed by the defendants is on the same cause of action, namely, breach of contract and has been filed earlier. Therefore, an application I. A. No. 2 was filed in O. S. No. 202 of 1969 to stay the subsequently instituted suit. Objections were filed to that application.

3. The learned trial Judge held that the matter in issue in both the suits is substantially same, parties are same and all the conditions u/s 10 of the Civil P. C. were satisfied. In that view, the application. I. A. II was allowed and the suit

was ordered to be stayed until the disposal of the suit filed in the court of the Senior Sub Judge at Delhi.

4. The only contention advanced by the learned counsel appearing for the petitioner in this revision petition is that one of the conditions laid down u/s 10, Civil P. C. has not been satisfied, and therefore, the lower court was in error in staying the Arsikere Suit until the disposal of the suit filed before the Delhi Court. His submission was that it was necessary for the learned Munsiff to have decided as to whether the Delhi Court has jurisdiction to entertain the suit filed by the defendants, and since the learned Munsiff has not determined that question, the order of stay granted by him was without jurisdiction. In that connection, reference was made by the learned counsel to the contention raised by the plaintiff in this suit and the defendant in the Delhi suit, alleging that no cause of action accrued within the jurisdiction of the Delhi Court, and therefore, that court has no jurisdiction to entertain suit. As against this the submission made by the learned counsel appearing for the respondents is that the Arsikere Court cannot determine as to whether the suit filed in the Delhi Court was within the jurisdiction of the Delhi Court; the only thing required to be determined is as to whether the subsequently instituted suit is tenable in that court and the question of jurisdiction of the Delhi Court cannot be determined while deciding the question as to whether an order for Stay should be granted or not.

5. Section 10 of the CPC reads as under:--

"10. No court shall proceed with the trial of any suit in which the matter in issue is also directly and subsequently in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigation 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."

The three essential conditions that are necessary for grant of stay order u/s 10 are: (1) that the matter in issue in the second suit is directly and substantially in issue in the previously instituted suit; (2) that the parties in the two suits are the same, and (3) that the court, in which the first suit is instituted, is a court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit. Therefore, what is required to be considered is as to whether the first suit is instituted in a court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit; it deals with regard to the competency to entertain and grant the relief of the nature claimed in the suit. This does not deal with regard to the questions relating to the territorial jurisdiction of the court to determine the matter. It deals with the competency of that court to grant relief. Such questions have come up for considerations before the courts and it has been stated that what is required to be determined is the competency to grant relief. For example, if the proceedings which are sought to be stayed is in the court of exclusive iuris-diction. then a suit cannot be stayed. Kalipada Banerji Vs.

Charubala Dasee,

6. In that view, as the Delhi Court has the competence to entertain the suit for recovery of money and can grant the relief claimed in the subsequently instituted suit, the trial court was justified in issuing an order of stay as prayed for by the defendants in the suit.

7. In the result, this revision petition fails and is dismissed. No costs.