
(1978) 02 DEL CK 0001

In the Delhi High Court

Case No : Interim Application Appeal No's. 1490 and 1507 of 1977 and Suit No. 383 of 1975

C.L. Tandon

APPELLANT

Vs

Prem Pal Singh etc.

RESPONDENT

Date of Decision : 09-02-1978

Acts Referred:

Citation : AIR 1978 Delhi 221 : (1978) 14 DLT 6 : (1978) RLR 261

Hon'ble Judges : M.S. Joshi, J

Bench : Single Bench

Judgement

M.S. Joshi. J.

(1) plaintiff sued the defts. on 3.6.75 at 10 a.m. for declaration & injunction. Some of the defts. filed somewhat similar suit at Patna on same day at 7 a.m. as during summer, Courts there started earlier. plaintiff at Delhi amended the plaint on 4.8. 75. Deft 4 etc. filed applications u/s 10, Cpc, for stay of suit. The order after giving above parts is para 4 onwards :

(2) The applications were opposed by the plaintiff who urged, inter alia, that the applications did not lie because the applicants had not yet filed their written-statements, the suit pending at Patna was not a previously instituted suit; the parties in the two suits were not the same; the court at Patna did not have the jurisdiction to grant the relief asked for here; the principal relief sought through the Delhi suit was not covered by suit at Patna, none of the contesting defendants reside at Patna and the mere fact that the defendants supporting the plaintiff are residents of Patna was not sufficient to give jurisdiction to that court; the cause of action for the Patna suit arose either at Lucknow or at Jaipur where the disputed meetings are alleged to have been held and the Patna court could not, Therefore, entertain the suit; though the Divine Light Mission was registered at Patna its headquarters from the very beginning had been at Delhi and it was registered as a society at Delhi as well before the present suit arose with the object of transferring even the nominal registered office to this place.

(3) The learned counsel for the parties have addressed arguments only on the points which they thought to be crucial for the purpose of stay of the instant suit. For instance the matter of jurisdiction of Patna Sub-Judge has not been canvassed before me for the reason it is awaiting decision of Patna High Court. The issue of jurisdiction of this Court in respect of the present case has not in the same manner been taken up because the defendants have yet to file their written-statements. The learned counsel for the plaintiff has argued that the opposite parties' plea as to the stay of the suit cannot be entertained unless and until they file their written-statements. An application u/s 10, CPC cannot, I must concede, be disposed of without the court being clear as to what are the matters in issue in the two suits and the filing of the written-statement is, with that end in view, usually insisted upon. But a certified copy of the Patna plaint has been produced by the applicants and its persual along with the plaint of the instant suit brings in full focus all the issues at which the parties are in conflict. It will be useless in this situation to put off the consideration of the relevant applications till all the parties to the suit have placed their pleadings on the record. The case reported in *Rup Chand Dharam Chand, Kanpur Vs. Basant Lal Banarsi Lal, Dhuri*, furnishes a pertinent instance where in similar circumstances filing of the written-statement was found to be unnecessary.

(4) The next question that falls for determination is whether the Patna suit is the previously instituted suit. According to the applicants the suit was filed in the court of Sub-Judge II on 28.5.1975 but it was returned for presentation to Sub-Judge I because of allocation of work amongst different judicial officers there. The courts at Patna, they have urged, were observing summer hours at that time and the plaint was re-presented to Sub-Judge I at 7 a.m. Vide Rule 10 (2) of Order 7 of the CPC when a plaint is returned the judge endorses on the same the date of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it. The copy of the Patna plaint filed in these proceedings does not bear any such endorsement. Rather, the verification at the foot thereof carries date 3.6.1975. It has been admitted at the Bar that after the return of the plaint certain changes were introduced in the averments bearing on jurisdiction and that is why a fresh verification had to be made on 3.6.1975. It is plain from the said undisputed facts that it was a new plaint that was filed on 3.6.1975, and the old one remained with the plaintiff.

(5) There is an affidavit sworn by Swaroop Chand (defendant No. 14) to the effect that the suit was instituted at 7 a.m. on 3.6.1975. This affidavit is claimed to have been made on the basis of information received from Nand Kishore Prasad Verma responsible for presentation of the Patna suit. The applicants have arranged to file in the meantime an affidavit from Nand Kishore Prasad Verma himself and because the plaintiff here was not present at Patna at the relevant time he is not undoubtedly in a position to contradict the averments made by Swaroop Chand and Nand Kishore Prasad Verma. Although the suit at Delhi too was instituted on 3.6.1975 but the plaint could not have been presented here before 10 a.m. In the circumstances the Patna suit would appear to be the

previously instituted one.

(6) It has been urged by Shri P.C. Khanna that the two suits having been filed on the same day, the Patna suit cannot be treated as previously instituted due to its having been filed three hours or so earlier. But the Delhi suit shall have to be treated as filed subsequent to the one at Patna for other reasons too. As has already been noted, the plaintiff had impleaded Prem Pal Singh Rawat as the only defendant in the first instance. He sought amendment of his plaint through an application under Order 6 rule 17, Order 1 rule 10 and section 151 of the CPC and the amended plaint was presented on 4.8.1975. This suit shall have to be taken as instituted against the person who joined the rank of defendants on 4.8.1975 on the aforesaid date, not on 3.6.1975 (See All India Reporter Ltd. and Another Vs. Ramchandra Dhondo Datar, . plaintiff is thus not in a position to controvert applicant's claim that Patna suit is the previously instituted one (S. 10 of CPC is then reproduced.)

(7) It is evident from the language of S. 10 that following conditions must be satisfied : (a) matters in issue should be substantially the same in the 2 suits; (b) The previously instituted suit should be pending in the same Court in which the subsequent suit is brought or in another court in India having jurisdiction to grant the relief claimed; and (c) The 2 suits should be between the same parties or their representatives and the parties should be litigating in the 2 suits under the same title.

(8) One of the important question is whether matters in issue in Delhi and Patna are the same. It is not the requirement of law that matters or issues involved in 2 suits should be totally identical vide Jai Hind Iron Mart Vs. Tulsiram Bhagwandas, ; Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another, & Arun General Industries Ltd. Vs. Rishabh Manufacturers Private Ltd. and Others, , but they must be substantially the same. (8 questions thrown up by Delhi suit are then reproduced).

(9) It will be patent from a comparative study of the two plaints that the contesting defendants in the Delhi suit claim to constitute the real governing body of the Divine Light Mission and according to them the plaintiff and the other defendants to the suit cannot boast that status whereas the plaintiff and the second set of defendants allege that it is they who constitute its legally valid governing body. As per the contesting defendants the Society registered at Bihar is the genuine Divine Light Mission whereas the plaintiff's faction contends that the registration of the Mission at Patna was formal, its headquarters had throughout been at Delhi and it had since secured registration at Delhi itself. The dispute about the validity of the meetings alleged to have been held at Jaipur and Lucknow, where defendants 1 to 11 in the Patna suit are alleged to have been removed from the membership of the Mission and consequently from the offices held by them, is also common to the two suits. But it cannot be denied that the three questions stated at the top of the applicants' list which arise in the suit at Delhi do not crop up in the litigation at Patna. The plaintiff here only has

alleged that Prem Pal Singh Rawat ceased to be the head of the Mission when he was removed from that office by Shri Mataji and Shri Satya Pal Singh Rawat alias Bal Bhagwan was nominated in his stead. The plaintiff's plea that Mataji the widow of the founder of the Mission, late Shri Hans Raj ji Maharaj, had the authority to remove Prem Pal Singh Rawat from the office of his Spiritual Successor or has not been referred to anywhere in the plaint at Patna. The dispute at Patna is confined for all practical purposes to the question as to which of the two rival governing bodies should be recognised by the court. That suit is thus concerned with the branches of the controversy and leaves alone the root, i.e. the office of the Guru. It is the Delhi suit alone which agitates the matter of removal of Prem pal Singh Rawat by the patron of the Mission, Mataji, and the consequent appointment in his place of Shri Satya Pal Singh Rawat as the spiritual head of the Mission. So the applicants have failed to satisfy the very first of the criteria set down above and it has inevitably to be found that the issue in the two suits are not the same. The mere fact that the controversy about the two governing bodies, one of the major issues, is common to the two suits will not by itself serve the applicants' purpose. It was held in *Shaw Wallace and Co. Ltd. Vs. Bholanath Mandanlal Sherawala and Others*, that one of the most essential conditions of section 10 is that the matter in issue in the later suit which is sought to be stayed must be directly and substantially in the earlier suit which is pending in the same or in any other court of concurrent jurisdiction and a mere identity of some of the issues in the two suits is not sufficient to attract this section. To the same effect is the law laid down in the two earlier decisions of the Allahabad High Court, i.e. *Gargi Din Misra Vs. Debi Charan and Hathi Ram Vs. Hazi Mohammad*, . One valuable touchstone for determining whether the matters in issue are directly and substantially the same is whether the decision in the prior suit will bring the principle of *res judicata* into operation in the subsequent suit. Because the removal of Prem Pal Singh Rawat by Mataji and the nomination in his place of Satya Pal Singh Rawat and the competence of Mataji to do the same, issues of utmost importance, are alien to the Patna suit, the disposal of the suit at Patna will not stand in the way of the trial of the said issues by the appropriate courts.

(10) Furthermore, Prem Pal Singh Rawat, who is alleged by Nand Kishore Prasad Verma, Roshan Lal Sharma and the other members of their set to be present head of the Mission is the centre of the whole controversy and he is not a party to the Patna Suit. Even if bids followers lose the battle at Patna, his right to assert that he continues to hold that office will remain intact. There can be no doubt about the proposition of law as propounded by the contesting defendants that section 10 does not require complete identity of the parties but it has been held in the very case cited by them in support of this plea, *Shorab Merwanji v. Mansata Film* AIR 1975 Cal 727, that the same parties of which section 10 speaks mean the parties as between whom the matter substantially in issue has arisen and has to be decided. The party most seriously interested in the litigation sought to be fought at Patna and Delhi is Prem Pal Singh Rawat and he has not

been imp leaded by the plaintiff of the Patna suit as a co-plaintiff or a defendant.