
(2000) 08 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32198 of 2000

Jameel Ahmad

APPELLANT

Vs

XII Addl. District Judge, Bulandshahr and Others

RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2000) 08 AHC CK 0081

Hon'ble Judges : O.P.Garg, J

Final Decision : Dismissed

Judgement

O. P. Garg, J.—This petition under Article 226 of the Constitution of India is directed against the order passed by the trial Court rejecting the application moved by the present petitioner under Section 10 of the Code of Civil Procedure for staying the proceeding in suit No. 371 of 1992. The petitioner referred a revision application No. 61 of 1994 which too has been dismissed on 2352000.

2. Heard Sri S. Alim Shah learned counsel for the petitioner as well as Sri Mohit Kumar appearing on behalf of the contesting respondents.

3. One Mohd. Yameen, one of the defendant to the present suit had filed a suit No. 140 of 1984 for the relief of permanent injunction against the Nagar Palika, Bulandshahr. The suit was dismissed. Mohd. Yameen preferred a first appeal No. 82 of 1987 which was allowed and the suit was decreed. There after, the Nagar Palika has filed a Second Appeal No. 2712 of 1987 before this Court which is still pending. Jemeel Ahmad, the present petitioner is the transferred from Mohd. Yameen. He is also the defendant in suit No. 374 of 1992 in which relief for cancellation of the saledeed has been prayed for.

4. The learned Counsel for the petitioner pointed out that since the property in dispute is the same and the parties of the two suits and the relief claimed are substantial and same, the proceeding in suit No. 374 of 1992 were required to be stayed under Section 10 C.P.C. on account of the pendency of the Second Appeal

No. 2712 of 1987, arising out of suit No. 130 of 1988.

5. The learned counsel for the petitioner place reliance on the decision of this Court reported in A.I.R. 1962 Allahabad 108, *Ram Narain v. Ram Swarap and others*, in which it was held that the object of Section 10 C.P.C. is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. It was further observed that complete identity of the subjectmatter is necessary to attract the application of Section 10 and if a matter directly and substantially in issue in a previously instituted suit is also directly and substantially in issue in a latter suit, then under Section 10 the later suit shall be stayed. But any matter common to the two suits will not attract the provisions of Section 10. The matter must be of substance, so that its decision in one suit shall affect materially the decision of the other suit. Reference was also made to the decision reported in A.I.R. 1983 Calcutta 199, *Challapalli Sugars Ltd. v. Swadeshi Sugar Supply Pvt. Ltd.*, in which it was held that the suit is liable to be stayed under Section 10, C.P.C. if the subjectmatter of the controversy between the two suits is the same. It was further held that even if reliance are based on different causes of action later suit should be stayed.

6. Sri Mohit Kumar learned counsel for the contesting respondent plaintiff urged that since the causes of action in the two suits properties and the relief claimed are entirely different, proceedings of the later suit cannot be stayed. He has fortified his contention by placing reliance on the Full Bench decision of this Court in the case of *Ram Charan v. State of U.P.*, 1979 A.L.J. 166, in which the proceedings in the later suit were not stayed and the principles of law governing the stay of the suit were discussed. In the subsequent decision reported in 1989 A.L.J. 1185, *Umesh Chandra Goyal v. Nem Kumar Jain and another*, it was held that the proceedings in the later suit cannot be stayed if the relief in both the suits are distinct and separate and one of the parties in the later suit is not a party to the earlier suit. Emphatic reliance was placed on the recent decision of this Court reported in 2000(2) JCLR 786 (All); 2000 All. C.J.575, *Smt. Meena Bhandari v. Smt. Krishna Kumar and another*. The four essential conditions for attracting the application of Section 10 C.P.C. have been laid down as such:

- (i) That the matter in issue in the second is also suit directly and substantially in issue in the first suit;
- (ii) That the parties in the second suit are the same or parties under whom they or any of them claims litigation under the same title;
- (iii) That the Court in which the first suit is instituted competent to grant the relief claimed in the subsequent suit;
- (iv) That the previously instituted suit is pending (a) in the same Court in which the second suit is brought, of (b) in any Court in India, or (c) in any Court beyond the limits of India established or continued by the Central Government, or (d) before the Supreme Court.

In order to attract the application of Section 10 C.P.C. above four ingredients are required to be fulfilled.

7. In the background of above law it is to be seen whether the proceedings in the later suit No. 374 of 1992 are required to be stayed or not. It is the (common .nc)case of the parties that in the said suit as well as earlier suit No. 140 of 1984 parties are different though Mohd. Yameen who had filed suit No. 140 of 1984 is one of the defendants in the permanent suit. The original suit was for the relief of permanent injunction while the present suit is for the relief of cancellation of the sale deed. Not only this there is also a controversy with regard to the identification of the property covered by the earlier suit as well as later suit. I am of the view that the provision of Section 10 C.P.C. are not attracted in the instance case. Consequently, the proceeding in the later suit cannot be stayed. The orders passed by the two courts below are in accordance with the provisions of law. It is not a fit case requiring intervention by invoking extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is dismissed.