
(2011) 05 CAL CK 0066
In the Calcutta High Court
Case No : C.O. No. 2635 of 2007

Paresh Ram Raurkar and Another APPELLANT
Vs
Sakhari Bai Raurkar and Others RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2011) 05 CAL CK 0066

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Ganesh Srivastava and Sukanta Das, for the Appellant;None, for the Respondent

Judgement

Prasenjit Mandal, J.—Challenge is to the order No. 26 dated April 17, 2007 passed by the learned Civil Judge (Junior Division), 2nd Court, Midnapore in Other Suit No. 46 of 2004 thereby rejecting an application u/s 10 of the Code of Civil Procedure.

2. The Plaintiffs/opposite parties herein instituted a suit being Other Suit No. 46 of 2004 against the predecessor-in-interest of the Petitioners before the learned Munsifs, 2nd Court, Midnapore for a decree of declaration of title and permanent injunction. The Petitioners entered an appearance and they filed a written statement. The suit proceeded in usual course and it is at the stage of peremptory hearing. Previously, the Petitioners instituted a suit being Title Suit No. 191, 1991 before the learned Civil Judge (Junior Division), 2nd Court, Midnapore against the opposite parties for declaration of right, title and interest in the suit property, eviction and also for permanent injunction over the selfsame property. In this suit evidence on behalf of both the sides has been completed and the suit has been fixed for argument the stage of peremptory hearing. The Petitioner filed an application for stay of the later suit, that is, Other Suit No. 46 of 2004. That application was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Upon hearing the learned advocate for the Petitioner and on perusing the materials on record, I find that the above findings get support from the materials on record. Thus, I find that two suits have been filed by the two parties over the selfsame property before the selfsame Court. The earlier suit, that is, Title Suit No. 191 of 1991 is at the stage of argument. Meaning thereby the evidence of both the parties has been completed and the judgment is likely to be delivered soon. But in the subsequent suit, it has just reached the peremptory hearing. The relief's sought for in the two suits are almost identical and it appears that the plaint in one suit is the written statement of the other suit. The parties are the same. Therefore, the essential ingredients of Section 10 relating to stay have been fulfilled in the instant case. Therefore, the learned Trial Judge should have stayed the later suit, that is, the Other Suit No. 46 of 2004 till the disposal of the earlier suit, that is, the Title Suit No. 191 of 1991. The impugned order relating to rejection of the application u/s 10 of the CPC filed by the Petitioner cannot, therefore, be supported.

4. Accordingly, the impugned order is hereby set aside. The Other Suit No. 46 of 2004 shall remain stayed till the disposal of Title Suit No. 191 of 1991.

5. Since, the Title Suit No. 191 of 1991 is at the stage of hearing argument, the learned Trial Judge is directed to dispose of the said Title suit within a period of 30 days from the date of the communication of this order.

6. This revision application is disposed of in the manner indicated above.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.