
(2012) 10 RAJ CK 0078
In the Rajasthan High Court
Case No : Civil Writ Petition No. 926 of 2009

Prem Chand and Others

APPELLANT

Vs

Smt. Sushila Devi and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 4 WLN 315

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : J.K. Singhi, with Mr. Ravindra Pal, for the Appellant; Ajay Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.

This petition purporting to one under Art 226 of the Constitution of India, but effectively one under Art. 227 of the Constitution of India has been filed against the order dt. 21.10.2008 whereby the learned Additional District Judge (Fast Track), No. 2, Alwar by resort to Section 10 of the Code of Civil Procedure, 1908 (hereinafter "the code of 1908") has stayed the petitioners-plaintiffs" (hereinafter the plaintiffs) suit bearing No. 77/ 2004 laid against the respondents-defendants (hereinafter "the defendants") on account of the fact that the suit before the Court was founded upon a purported Will dt. 18.07.1993 in respect whereof the issue had earlier been agitated in suit No. 48/1997 at the instance of the defendants inter alia against the plaintiffs and a judgment and decree had already been passed on 11.04.2005 by the learned District and Sessions Judge, Alwar holding that the Will dt. 18.07.1993 was non-binding and liable to cancellation. The Court noted the fact that against the judgment and decree dt. 11.04.2005 in civil suit No. 48/1997, an appeal i.e. S.B. Civil First Appeal No. 308/2005 had been filed by the plaintiffs before the High Court which

was pending adjudication.

1. The facts of the case are that one Rameshwar Nath owned certain immovable properties. One of his sons, Bhupendra Kumar Saini, husband of Sushila Devi and father of Prashant Kumar, the defendants, predeceased him. Following Rameshwar Nath's death, the plaintiffs herein propagated the Will dt. 18.07.1993 seeking to defend a suit for partition and injunction filed by Sushila Devi as the wife of late Bhupendra Kumar Saini.

2. In the said suit No. 48/1997 the Court of District and Sessions Judge, Alwar passed a judgment and decree dt. 11.04.2005 holding the Will dt. 18.07.1993 purported executed by Rameshwar Nath propagated by the plaintiffs herein as nonbinding and fake. Sushila Devi and her son were found entitled to a partition of the property of Rameshwar Nath to the extent of the share of his predeceased son Bhupendra Kumar Saini.

3. In the suit No. 77/2004 laid by the plaintiffs wherefrom the present petition arises, the status of Sushila Devi the defendant was stated to be that of a licensee and on averments of cancellation of her licence, she was sought to be dispossessed from the property under her occupation. The learned trial Court in these circumstances held that the foundation of the subsequent suit bearing No. 77/2004 based on the Will dt. 18.07.1993 and the said Will already having found unenforceable by the trial Court in suit No. 48/1997 under its judgment and decree dt. 11.04.2005 (appeal whereof was pending before the High Court at Jaipur) subsequent suit was liable to be stayed with reference to the provisions of Section 10 of Code of 1908.

4. Perused the writ petition and the impugned order dt. 21.10.2008. Heard and considered.

5. Section 10 of the Code of 1908 provides that where a subsequent suit seeks to agitate the matters substantially identical with the matters in the earlier suit between the same parties or those claiming under them it is liable to be stayed. Provisions of Section 10 of the Code of 1908 entail staying of subsequent suit when the issue sought to be agitated is pending in an earlier suit before a Court of competent jurisdiction. It is not necessary as was sought to be argued by the counsel for the petitioners that the parties in the two suits have to be exactly identical. To my mind, it is sufficient if the plaintiff/s in the subsequent suit is/are a party to an earlier suit or claim under a party in an earlier suit against similar defendant/s and is/are agitating an issue/s substantially identical to the issue in an earlier suit. In the case of Gupte Cardiac Care center and Hospital Vs. Olympic Pharma Care Pvt. Ltd., the Hon"ble Supreme Court has held that even though in the case before it there were two plaintiffs and two defendants in an earlier suit at Nashik while there was only one plaintiff and one defendant in the suit at Delhi, yet there being substantial identity of the subject matter in the two suits and the issue arising for determination therein being necessarily the same entailing only decreeing of one of the two suits and the dismissal of the other,

the provisions of Section 10 of the Code of 1908 would be attracted. Therefore, the Hon"ble Supreme Court held that the safe course to avoid duplication of evidence and better utilise the time and energy of the Courts, the suit filed subsequently would be liable to be stayed with reference to Section 10 of the Code of 1908. It thus cannot be disputed that the rule to be followed is to stay the subsequent suit seeking to agitate substantially the same factual or legal aspect of a matter as agitated or being agitated in the prior suit between the parties common or between the parties claiming through parties in the earlier suit. To my mind there is no reason or factor available in the facts of the present case for making a departure from the aforesaid rule. In the present case, the Will dt. 18.07.1993 purportedly executed by Rameshwar Nath and propounded by Narender Kumar has been disbelieved by the Court of District and Sessions Judge, Alwar in suit No. 48/1997 under judgment and decree dt. 11.04.2005. The said judgment and decree is under challenge in S.B. Civil First Appeal No. 308/2005 Narendra & Ors. vs. Sushila Devi & Ors. before this High Court. The suit before the trial Court wherein the impugned order dt. 21.10,2008 has been passed by resort to Section 10 of the Code of 1908 i.e. suit No. 77/2004 also is admittedly rooted in the Will 18.07.1993 which Will is also the subject matter of Civil First Appeal No. 308/2005. In the facts obtaining, to my mind the learned trial Court has committed no error of jurisdiction, nor is the impugned order dt. 21.10.2008 vitiated by any misdirection in law.

6. Consequently, I find no ground to interfere in the present petition which purporting to one under Art. 226 of the Constitution of India as it seeks to agitate a challenge to an interim order dt. 21.10.2008 is fundamentally one under Art. 227 of the Constitution of India. The writ petition is without force and the same deserves to be dismissed.