
(1999) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Revision Petition No. 258 of 1995

Pukh Raj and Others

APPELLANT

Vs

Ahmed Bhai and Others

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 100, 151, 2, 51

Citation : (1999) 3 CivCC 197 : (1999) 2 RLW 971 : (1999) 1 WLN 461

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—The instant revision petition has been filed against the order dated 5.01.1995, whereby the learned trial court has rejected the application of the tenant-defendant-revisionists moved u/s 10 of the CPC refusing to stay the proceedings of subsequent Original Civil Suit No. 357/93 under the aforesaid Section on the ground that the matter in issue involved in the abovementioned suit is not directly and substantially in issue in the previously instituted suit between the same parties.

2. Indisputably, the previously instituted suit for eviction was founded on two causes of action. One of sub-letting and the other of reasonable and bonafide necessity of the land lord-plaintiff-non petitioners as envisaged under Clause (e) and Clause (h) of Sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act 1950 (hereinafter referred to as the Act No. 17 of 1950) which was filed by the land lord plaintiff-non petitioners against the present tenant-defendant-revisionists before the learned trial court whereas the subsequent suit No. 357 of 1993 for eviction is founded on only one cause of action i.e. of reasonable and bonafide necessity of the land lord-plaintiff-non petitioners as envisaged under Clause (h) of Sub-section (1) of Section 13 of the said Act.

3. The aforesaid previously instituted suit was decreed by the learned trial court on 5.11.1980 holding that the present tenant defendant-revisionists had sublet the disputed premises without consent of the present landlord plaintiff-non petitioners although the plea relating to reasonable and bonafide necessity was negated.

4. Aggrieved against the judgment and decree dated 5.11.1980, the present tenant-defendant-revisionists filed an appeal u/s 96 of the CPC before this Court, which was allowed on 8.11.86 by the learned Single judge, holding that the present land lord-plaintiff-non petitioners failed to establish sub-letting of the disputed premises by the present tenant-defendant-revisionists as envisaged under Clause (e) of Sub-section (1) of Section 13 of Act No. 17 of 1950.

5. Thus, the previously instituted suit for eviction of the disputed premises filed by the present landlord-plaintiff-non petitioners against the present tenant-defendant-revisionists was dismissed in toto by the learned Single Judge of this Court on both grounds of sub-letting and reasonable and bonafide necessity.

6. Aggrieved against, the judgment and decree passed by the learned Single Judge of this Court on 8.11.1986 the present landlord-plaintiff-non petitioners filed Special Appeal No. 18/87, which was admitted on 11.2.1991 and it is still pending consideration before the Division Bench of this Court.

7. It is to be noticed that although the aforesaid Special Appeal is sub-judiced before Division Bench of this Court yet during the pendency of said Special Appeal, the present suit No. 357 of 1993 for eviction is filed by the present landlord-plaintiff-non petitioners against the tenant-defendant-revisionists on the ground of their reasonable and bonafide necessity under Clause (h) of Sub-section (1) of Section 13 of Act No. 17 of 1950.

8. I have heard learned Counsel for the parties and perused the order passed by learned trial court rejecting the application u/s 10 CPC moved by the tenant-defendant-revisionists for stay of subsequent suit for eviction filed against them by the landlord-plaintiff-non petitioners.

9. For better and deeper understanding of the controversy involved in the present revision petition it would be expedient to quote Section 10 CPC in extensor-

Section 10. Stay of suit. - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating 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.

Explanation. - The pendency of a suit in a foreign Court does not preclude the

Courts in India from trying a suit founded on the same cause of action.

10. The interpretation of Section 10 CPC in an identical situation came up for consideration before me in case of Smt. Devi v. Banwari Lal reported in 1998 DNJ 418 wherein in paragraphs 22 to 24 it was held, which reads thus-

22. It is true that plaintiff-respondent is entitled to file a suit for specific performance but in my opinion in the present case filing of suit for specific performance of contract by plaintiff-respondent though not barred yet its trial is not permissible within the meaning of Section 10 CPC. Trial of suit means final hearing of the matter consisting of examination of witnesses, filing of documents and addressing arguments in the subsequent suit. I am also of the view that in the present case previously instituted suit for eviction u/s 183 of the Rajasthan Tenancy Act, 1955 by the defendant-appellant Smt. Devi alone should be proceeded with and subsequent suit filed by plaintiff-respondent for specific performance must be stayed within the meaning of Section 10 CPC.

23. It is to be imbibed that for application of Section 10 CPC, four essential conditions are to be fulfilled, which are : Firstly - the matter in issue in the second suit is also directly and substantially in issue in the first suit; Secondly - that parties in the second suit are the same or parties under whom they or any of them claim litigating under the same title; Thirdly - the Court in which the first suit is instituted, is competent to grant the relief claimed in the subsequent suit and; Lastly - that previously instituted suit is pending either in the same Court in which the subsequent suit is filed or in any other Court in India or any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the High Court or Supreme Court. Thus, Section 10 CPC is definite and mandatory. The Court in which the subsequent suit is instituted is prohibited from proceeding with its trial. It is to be noticed that Section 10 CPC does not become inapplicable by holding that previously instituted suit is vexatiously instituted in violation of the terms of the contract.

24. In abundant caution, it is held that Section 10 of CPC does not take away the inherent power of civil or revenue Court to stay the subsequent suit u/s 151 CPC. In a peculiar facts and circumstances of a case if justice and fair play demands to stay the subsequent suit even if the aforesaid four conditions are not strictly fulfilled even the subsequent suit can be stayed u/s 151 CPC.

11. It is to be noticed from the decision rendered in case of Smt. Devi (supra) that I have taken a view to the effect that in those cases where requirements of Section 10 CPC are not strictly satisfied both Civil and Revenue Courts will have jurisdiction to stay the subsequent suit u/s 151 CPC. I see no reason to differ with the view taken in case of Smt. Devi (supra) and it is hereby reiterated.

12. With the aforesaid introspection, now I would like to deal with the arguments raised in the present case by the learned Counsel for both the parties.

13. It is urged by learned Counsel for the revisionist that the issue relating to

reasonable and bonafide necessity of the landlord-plaintiff-non petitioners raised in the subsequent civil suit No. 357 of 1993 is directly and substantially in issue in the previously instituted civil suit arising out of which the Special Appeal before a Division Bench of this Court is still pending. It is further submitted that Special Appeal is continuation of the previously instituted suit, therefore, the learned trial court has committed jurisdictional error in rejecting the application moved by the tenant-defendant-revisionists u/s 10 CPC. It is also urged by the learned Counsel for the revisionists that if the order impugned passed by the learned trial court is allowed to stand it would occasion failure of justice and would cause irreparable injury to the revisioists.

14. The learned Counsel appearing on behalf of the landlord- plaintiff-non-petitioners opposed the aforesaid arguments with equal vehemence. It is urged by learned Counsel Mr. R.R. Nagouri, appearing on behalf of land lord-plaintiff non petitioners that as in the previously instituted suit the land lord-plain tiff-non-petitioners did not prefer an appeal u/s 96 of CPC against the judgment and decree of eviction passed by the learned trial court, decreeing the said suit on the ground of sub-letting, therefore, he cannot be precluded to file the present subsequent suit on the fresh ground of reasonable and bonafide necessity under Clause (h) of Sub-section (1) of Section 13 of Act No. 17 of 1950.

15. The aforesaid contention of the learned Counsel Mr. R.R. Nagouri is held to be misplaced on the principle of merger. It is to be noticed that the earlier suit for eviction was filed on the ground of reasonable and bonafide necessity and sub-letting. The ground of bonafide and reasonable requirement of the plaintiff-land lord-non petitioners was negated by the trial court and the second ground regarding sub-letting was negated by the High Court, therefore, the judgment and decree passed by the High Court in First Appeal on 8.1.1986, the suit filed by the plaintiff-landlord non-petitioners stood dismissed in toto against which they have filed Special Appeal which is subjudice. As a matter of fact, once the principle of merger is extended to the judgment and decree passed by the learned trial court will be deemed to be merged in the judgment and decree passed by the High Court.

16. There is yet another reason to repel the aforesaid argument of Mr. Nagouri. It is well to remember that an appeal will lie against every decree passed by any Court exercising original jurisdiction u/s 96 CPC to the Court authorised to hear appeals from the decision of such Court. The same principle is applicable u/s 100 CPC wherein also appeals lie not against judgments or findings of the Courts but it lies against a decree prepared in pursuant to the decisions of first appellate court. The expression "decree" is defined under Sub-section (2) of Section 2 CPC. Since in the present case, no decree was passed against the present landlord-plaintiff-non-petitioners by the trial court, therefore, they were not entitled to file an appeal against the decree passed by learned trial court within the meaning of Section 96 CPC. As the present landlord -plaintiff-non-petitioners were not entitled to file an appeal against the decree passed by the trial court,

the question of submitting to the decree by them does not arise. The aforesaid argument is misconceived and it seems to me to have been raised merely to be rejected and it is hereby repelled.

17. It is next contended by learned Counsel for the plaintiff-land-lord-non-petitioners Mr. R.R. Nagouri that the ground of reasonable and bona fide necessity in the subsequent suit is not the same as was alleged in the previously instituted suit. Suffice it to say in this regard that it is not necessary that the ground of reasonable and bonafide necessity should be the same as was alleged in the previously instituted suit provided the subsequent suit is founded on the same cause of action. It is established in the present case that the previously instituted suit was filed on two causes of action i.e. sub-letting and reasonable and bonafide necessity whereas the subsequent suit No. 357 of 1993 is founded on only one cause of action i.e. reasonable and bonafide necessity which is sufficient to attract the applicability of Section 10 CPC. A civil suit can be filed on one cause of action or more than one causes of action. The plaintiff cannot be allowed to file a subsequent suit during pendency of the previously instituted suit by splitting two causes of action simply to hoodwink the applicability of Section 10 CPC.

18. Be that as it may, in order to avoid multiplicity of legal proceedings and to save wastage of public time of the courts and also to avoid legal complications which may arise after decision of the Special Appeal No. 18/87, which is still pending consideration before Division Bench of this Court arising out from the previously instituted suit for eviction on the ground of Clauses (e) and (h) of Sub-section (1) of Section 13 of Act No. 17 of 1950, the trial of subsequent suit No. 357 of 1998 filed by landlord-plaintiff-non-petitioners against present tenant-defendant-revisionists to obtain a decree for eviction against them under Clause (h) of Sub-section (1) of Section 13 of Act No. 17 of 1950 deserves to be stayed u/s 51 CPC in the interest of justice and fair play.

19. For the reasons discussed hereinabove the order impugned dated 5.01.1995 is hereby set aside and the instant revision petition is allowed. The subsequent Civil Suit No. 357/93 pending in the Court of Civil Judge (Junior Division) and Judicial Magistrate No. 5, Jodhpur shall remain stayed till decision of the Special Appeal No. 18/87 pending before the Division Bench of this Court. Cost is made easy.