

(1961) 03 AHC CK 0019
In the Allahabad High Court
Case No : Civil Revision No. 679 of 1959

Ram Narain

APPELLANT

Vs

Ram Swarup and Others

RESPONDENT

Date of Decision : 27-03-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 115

Citation : AIR 1962 All 108

Hon'ble Judges : J.D. Sharma, J

Bench : Single Bench

Advocate : Gopal Behari and H.P. Gupta, for the Appellant; S.D. Agarwala, for the Respondent

Final Decision : Allowed

Judgement

J.D. Sharma, J.—This is an application in revision against an order dated the 9th May 1959 of the learned Second Additional Civil Judge, Agra.

2. The applicant brought suit No. 69 of 1957 in the court of the Second Additional Civil Judge, Agra, on the allegations that he was the owner of a Mercedes-Benz truck which he transferred to the defendants under a hire-purchase agreement which provided for the payment of the price in 12 installments of Rs. 1,900/- each. Only five installments were paid. In default the plaintiff was entitled to take back the truck, and by mutual agreement the truck was taken back by the plaintiff on the 10th April 1957. The plaintiff claimed a declaration that he was the owner and in rightful possession of the truck and for the recovery of the unpaid installments.

3. The defendants to the above suit (the opposite parties) brought suit No. 48 of 1958 in the same court on the allegations that they had purchased the truck from the defendant i.e., the applicant) and had become owners thereof and it was wrongfully removed by the defendant from their possession on the 10th April 1957. The opposite parties claimed a declaration that they were the owners of

the truck and damages for alleged removal of tyres etc. and further claimed Rs. 17,250/- as damages suffered by them.

4. This suit was contested, inter alia, on the grounds that the truck was given to the plaintiff under a hire-purchase agreement and as there was default in the payment of installments the truck was taken over by him by mutual agreement.

5. The plaintiff of the earlier suit (the present applicant) made an application u/s 10 C. P. C. for stay of the second suit on the ground that the matter in issue in suit No. 48 of 1958 was directly and substantially in issue in the previously instituted suit No. 69 of 1957.

6. The learned Second Additional Civil Judge held that the matter directly and substantially in issue in both the suits was whether the truck was given under a hire-purchase agreement or there was a sale, and as there were other questions regarding damages etc. arising in suit No. 48 of 1958, the decision in the earlier suit could not operate as *res judicata* and therefore the second suit was not liable to be stayed u/s 10. C. P. C.

7. It is urged in revision that the matter relating to the nature of the transaction under which the truck was taken by the plaintiff of suit No. 48 of 1958 being directly and substantially in issue in both the suits the second suit was liable to be stayed u/s 10 C. P. C.

8. Section 10 C. P. C. says that 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. The object of the section is obviously to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. As observed in *Jai Hind Iron Mart Vs. Tulsiram Bhagwandas*, the principle underlying Section 10 seems to be that the policy of the legislature is opposed to two courts with parallel jurisdiction proceeding simultaneously with two suits when there is a possibility of the two courts coming to different conclusions and thereby resulting in conflict of decisions.

There is however a conflict regarding the exact scope of Section 10. One view is that Section 10 will apply only if there is a complete identity of the subject-matter in the two suits, so that decision in one suit will operate as *res judicata* in the other. The other view is that complete identity of the subject-matter is not 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 later suit then u/s 10 the later suit shall be stayed.

Section 12 of the Code of 1882 contained the words "for the same relief" after the words "previously instituted suit". It was therefore held that it was necessary for the application of the section not only that the matter in issue in the second suit should also be directly and substantially in issue in the first suit but that the second suit must be for the same relief as that claimed in the first suit : see

Balkishen v. Kishan Lal ILR 1911 All 148 and Ramalinga v. Raghunatha ILR 1920 Mad 418. In spite of the omission from Section 10 of the words "for the same relief it was held that a suit cannot be stayed although the main issue in both the suits is the same if the subject-matter of the second suit is different from that of the first suit: see Choudhuri Jamini Nath Mullick and Others Vs. Midnapur Zemindary Company, Bepin Behary v. Jogendra Chandra 36 Ind Cas. 641 : AIR 1917 Cal 248 and Kesho Prasad Singh v. Shiva Saran 51 Ind Cas 36 : AIR 1919 Pat 491.

9. Reliance on behalf of the applicant is placed upon Jai Hind Iron Mart Vs. Tulsiram Bhagwandas, in which it was held that Section 10 does not contemplate identity of issues between the two suits nor does it require that the matter in issue in the two suits should be directly the same or identical. What the section requires is that the matter in issue in the two suits should be directly and substantially the same and proper effect must be given to the language used by the legislature in Section 10 that the identity required is a substantial identity. There must be an identity of the subject-matter. The field of controversy between the parties in the two suits must also be the same, but the identity contemplated and the field of controversy contemplated should not be identical and the same in every particular, but the identity and the field of controversy must be substantially the same.

10. The opposite parties, on the other hand, have referred to L. Nem Kumar Agarwal Vs. Nem Kumar and Another, where it was laid down that Section 10 C. P. C. requires that a suit must be stayed if the matter directly and substantially in issue in it is also directly and substantially in issue in a previous suit which is pending, the criterion for testing whether the subsequent suit be stayed or not is whether there is an identity of the matters directly and substantially in issue in the two suits. If there is, the subsequent suit must be stayed, and if there is not, it will not be stayed. To appreciate the real import of the decision a brief reference to the facts is necessary.

11. In 1948 a suit was brought for possession of a car on the allegation that the plaintiff was the owner of the car having purchased it in Delhi with his own money and that he had lent it for a certain period to the opposite party and the opposite party had not returned it. The suit was contested on the grounds that the opposite party himself was the owner of the car, having purchased it in Delhi with his own money, but in the name of the plaintiff and that he (the opposite party) was the owner of the shop known as Sasta Kisan Loha Store and the plaintiff worked in the shop as manager.

The issues that were framed by the trial court were (1) whether the applicant was the owner of the car and (2) whether the opposite party had purchased it benami in the name of the applicant and whether the applicant had lent it to the opposite party. No dispute arose about the interest of the plaintiff in the shop and whether interest might have been claimed in the shop was wholly irrelevant for the purpose of the suit brought by him because he did not claim title to the

car on account of his interest in the shop, and therefore, no issue was framed about his interest in the shop. The suit was dismissed on the finding that the car belonged not to the plaintiff but to the shop, Sasta Kisan Loha Store.

In appeal the District Judge framed an issue as to who was the owner of the shop and to whom the car belonged, and referred it to the trial court for a finding, directing that the trial court should not record fresh evidence so long as Civil Appeal No. 143 of 1951 was decided. This appeal arose out of another suit No. 22 of 1948 that was instituted after suit No. 21 of 1948 for rendition of accounts of the shop. In this appeal an application was made by the plaintiff of the earlier suit for its stay u/s 10 C. P. C. on the ground that the matter directly and substantially in issue was also a matter directly and substantially in issue in the previous appeal No. 91 of 1949. The application was rejected. The contention that the second suit should be stayed if the decision in the earlier suit operated as *res judicata* was not accepted. Referring to this argument it was remarked;

"To say that Section 10 will apply if the decision in the earlier suit would operate as *res judicata* in the subsequent suit, does not at all advance the solution of the problem because it will still have to be decided whether the matter in issue in the subsequent suit was directly and substantially in issue in the earlier suit. Whether the decision in the previous suit will operate as *res judicata* in the subsequent suit cannot be decided without deciding whether the matters in issue in the two suits are directly and substantially the same."

Applying the test whether there was identity of matters directly and substantially in issue in the two suits the conclusion arrived at was that the matters that arose directly and substantially in the two suits were not identical and Section 10 C. P. C. did not apply. In the earlier suit the question was simply of the ownership of the car and the question of the plaintiff's interest in the shop did not arise at all. The subject matter of the second suit was the shop and the interest of the plaintiff of the first suit in it and that suit had nothing to do with the car or the personal property of the plaintiff of the earlier suit. The decision must therefore be confined to the particular facts of the case, and it is no authority for the proposition that to attract the provisions of Section 10 C. P. C. there must be a complete identity of the subject-matter in the two suits.

12. In the instant case the matter directly and substantially in issue in the two suits was whether the truck was given to the opposite parties under a hire and purchase agreement or there was a sale out and out, and whether the applicant (the plaintiff of the earlier suit) had got back the truck by mutual agreement. If these two issues were decided in favour of the applicant then the second suit will largely fail. Any matter common to the two suits will not attract the provisions of Section 10 C. P. C., the matter must be of substance so that its decision in one suit shall affect materially the decision of the other Suit. In view of the mandatory provisions of Section 10 C. P. C. the second suit was liable to be stayed.

13. The Court below in refusing to stay the second suit under the mandatory provisions or Section 10 C. P. C. acted illegally or with material irregularity in the exercise of its jurisdiction, and therefore the revision is maintainable. It was held in Jai Hind Iron Mart Vs. Tulsiram Bhagwandas, , that an order u/s 10 is not an order dealing with procedure; it is an order dealing with the jurisdiction of the Court because u/s 10 whatever order is passed affects the jurisdiction, of the Court.

14. The revision is allowed and the order dated the 9th May 1959 is set aside. The second suit shall remain stayed till the decision of suit No. 69 of 1957. In the circumstances of the case the parties shall bear their own costs.