
(1986) 09 PAT CK 0009
In the Patna High Court
Case No : Civil Revision No. 462 of 1983

Sanjita Kumari

APPELLANT

Vs

Bhola Prasad and Others

RESPONDENT

Date of Decision : 24-09-1986

Acts Referred:

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

Citation : (1988) PLJR 803

Hon'ble Judges : S.K. Jha, J

Bench : Single Bench

Advocate : Vidya Sagar, for the Appellant; Ram Suresh Roy and Dronacharya, for the Opp. Party Nos. 1 to 3, for the Respondent

Judgement

S.K. Jha, J.—The plaintiff, Sanjita Kumari, of Title Suit No. 37 of 1980 pending in the court of Munsif, Nalanda at Biharsharif has come up to this court in revision against an order dated 5.2.1983 passed by the learned Munsif rejecting her prayer to stay the hearing of this suit till the disposal of Title Suit No. 107 of 1978 pending in the court of Additional Subordinate Judge, Biharsharif. The application was filed u/s 10 of the CPC read with section 151 thereof (hereinafter to be referred to as the Code). The relevant facts to be taken note of are very short and simple. Plaintiff No. 4 in Title Suit No. 107 of 1978 was Sanjita Kumari with regard to whose identity as to whether she was actually Sanjita Kumari or not was a matter in controversy and the matter at one stage came up to this Court.

In that case (Civil Revision No. 1042 of 1980) this court by its judgment and order dated 7th August, 1981 while allowing the application of that Sanjita Kumari, (a minor) plaintiff No. 4 in the earner suit, held that the court will have to make an enquiry before appointing a guardian of the girl, Sanjita Kumari, and the question of amendment of the plaint must be considered only after proper representation of the girl is made. Therefore, one of the substantial issues in the earlier suit was with regard to the identity of Sanjita Kumari in that case. The

present suit namely, Title Suit No. 37 of 1980 out of which this Civil Revision application arises has been filed by another Sanjita Kumari claiming to be the real Sanjita Kumari and dubbing the plaintiff No. 4 in the earlier suit as an imposter. Therefore, for all practical purposes, unless it is decided as to whether the plaintiff No. 4 is Sanjita Kumari, the present suit has to be stayed as it is clearly covered within the terms of section 10 of the Code and if not then, u/s 151 of the Code. It is settled law to which no discordant note has been struck so far as has been laid down by Chagla C.J. and Gajendragadkar, J. in the case of Jai Hind Iron Mart Vs. Tulsiram Bhagwandas, . In that case it has been held that a party cannot be restrained from proceeding with an earlier instituted suit u/s 10. He can only be restrained under the inherent power of the Court and those powers are exercised when the Court is of the opinion that the suit constitutes an abuse of the process of the Court or has been filed mala fide or in order to forestall the suit which the defendant would have filed in another Court. Therefore, an order refusing to issue an injunction against a party restraining him from proceeding with the earlier suit is made u/s 151 of the Code.

2. Coming to the interpretation of section 10 of the Code which is more pertinent and relevant in this context is that to quote the words of Chagla C.J. speaking for the Bench:--

Section 10 does not contemplate an identity of issues between the two suits, not does it require that the matter in issue in the two suits should be entirely the same or identical. What the section requires is that the matter in issue in the two suits 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 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.

3. In the instant case that is exactly the point. If this Sanjita Kumari of the earlier suit is the real Sanjita Kumari then the present suit is bound to fail: on the contrary, if she is an imposter then the present suit will take its own course and be decided in accordance with law. "Therefore, the field of controversy contemplated by section 10 of the Code although not identical and the same in every particular, the identity and the field of controversy is substantially the same. The case is, therefore, squarely covered by this well settled principle of law. The learned Munsif has, therefore, clearly committed a jurisdictional error by not granting stay of the suit instituted later. I am, therefore, constrained to hold that the impugned order suffers from a jurisdictional infirmity and has to be set aside. This application is, accordingly, allowed and Title Suit No. 37 of 1980 herein before mentioned must remain stayed till the disposal of Title Suit No. 107 of 1978 pending in the court of 2nd Additional Subordinate Judge. Bihar Shariff at a very early date. However, in the circumstances of the case, I shall make no

order as to costs.