

(1992) 10 PAT CK 0017
In the Patna High Court
Case No : C.R. No. 518 of 1992

Smt. Kamla Devi

APPELLANT

Vs

M/s Gangabati Pictures and others

RESPONDENT

Date of Decision : 23-10-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 10, 151

Citation : (1993) 2 PLJR 420

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Judgement

U.P. Singh, J.—Heard the Learned Counsel for the parties. The validity of the order dated 11th June, 1992, passed by the Subordinate Judge I, Sitamarhi, on an application u/s 10 of the Code of Civil Procedure, hereinafter to be referred as "the Code", for staying the proceedings of the subsequent suit has been challenged by the petitioner in this case.

2. The impugned order is in two parts. The second part is in relation to petition filed under Order 39, Rule 1 and Section 151 of the Code by the plaintiff-opposite party. The second part is the order passed on the application filed by the defendant-petitioner contending that the subsequent suit should be stayed. The Subordinate Judge rejected the said application on the ground that the same shall be determined after filing of the written-statement.

3. It appears that the Court below acted on misconception of law and treated the said application u/s 10 of the Code as an application for granting injunction and, perhaps, with that misconception of law rejected the application u/s 10 by saying that the same shall be considered after filing of the written statement. There is no such condition precedent u/s 10 of the Code and, therefore, the Subordinate Judge was not justified in rejecting the said application on the said ground. Section 10 of the Code clearly states 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, 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 oilier Court in India having jurisdiction to grant relief claimed."

4. Here, in the facts of the present case, it is pointed out that the previous suit was relating to the same subject matter and the same was directly and substantially involved in the present suit. The dispute is relating to the ownership and possession of the cinema house in question which was directly and substantially in issue in the previous suit and the same is the issue involved in the present suit. Therefore, the Court below was not justified in holding that the order on the application u/s 10 of the Code could be passed only after filing of the written-statement. When the application u/s 10 of the Code was presented for staying the subsequent proceeding it is not understandable as to how the Court below could proceed to deal with the injunction petition filed by the plaintiff-opposite party. The injunction was granted overlooking the provisions of section 10 of the Code. Before doing that, it was to be decided as to whether the proceedings of the subsequent suit should have been stayed and without dealing with that the injunction should not have been granted. The question of granting injunction was interlinked and the application filed u/s 10 of the Code for staying the subsequent suit had to be disposed of first. The impugned order is, therefore, set aside and the Court below is directed to consider the application filed u/s 10 of the Code for staying the subsequent suit and only, thereafter it can pass such other order as may be necessary, if the said suit is not stayed. This application is, accordingly, disposed of with the direction indicated above.