
Soumya Sarthak Ray Vs Alaka Ghosh And Another

CMP No. 1328 Of 2023

Court: Orissa High Court

Date of Decision: Dec. 6, 2023

Acts Referred:

Constitution of India, 1950 " Article 227#Code of Civil Procedure, 1908 " Section 10, Order 7 Rule 11, Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: K.R. Mohapatra, J

Bench: Single Bench

Advocate: Bibekananda Bhuyan, Tushar Kumar Mishra, Jayadeep Pal

Final Decision: Dismissed

Judgement

K.R. Mohapatra, J

1. " , This matter is taken up through hybrid mode.

2. Order dated 19th October, 2023 (Annexure-7) passed by learned Senior Civil Judge, Bhubaneswar in CS No.550 of 2022 is under challenge in this

CMP, whereby an application filed by the Defendant No.1/Petitioner to stay further proceeding of the suit till disposal of CS No.1964 of 2019 pending

in the said Court, has been rejected.

3. Mr. Bhuyan, learned counsel submits that Defendant No.1 is the Petitioner in this CMP. He has also filed CS No.1964 of 2019 with the prayer for

following direction.

"a) Let a decree for permanent injunction be passed restraining the defendant from coming over the suit land and evict the plaintiff therefrom forcibly, and/or

interfere in the peaceful possession of the plaintiff over the suit premises in any manner whatsoever;

b) Let the cost of the suit be decreed in favour of the plaintiff; and

c) Any other order/s that would be found just and proper be also given."

In the said suit, the Petitioner also filed IA No.1 of 2019 under Order XXXIX Rules 1 and 2 CPC and learned trial Court, vide order dated 11th

August, 2022 (Annexure-4), directed the parties to maintain status quo over the suit property by making the ex-parte ad-interim order of status quo

dated 21st November, 2019 in the said IA absolute. At this juncture, mother of the Defendant in CS No.1964 of 2019 filed CS No.550 of 2022 with

the following prayers.

“a) To pass a decree for Eviction from the suit premises with the rooms standing over it within the time as may be fixed by the Hon’ble Court failing which

the Defendant No.1 may be evicted from the suit premises through process of court;

b) To decree Arrear House Rent, Damages and Compensation as well as cost of the Suti in favour of the

c) To grant any other relief/reliefs as this Hon’ble Court deems fit and proper in favour of the Plaintiff.”

4. It is submitted by Mr. Bhuyan, learned counsel for the Petitioner that if CS No.550 of 2022 is decided ahead of CS No.1964 of 2019 filed by the

Petitioner, the Petitioner will be highly prejudiced and the decree in CS No.550 of 2022 may operate as a res judicata in CS No.1964 of 2019. It is

submitted that the suit property in both the suits are same. Some of the parties are also same in both the suits. Defendant Nos. 1 and 2 in the present

suit are Plaintiff and Defendant respectively in CS No.1964 of 2019. In CS No.1964 of 2019, the Petitioner has prayed for permanent prohibitory

injunction to restrain the Defendant No.2 in the present suit from evicting the Petitioner from the suit house forcibly. In the present suit, mother of

Defendant No.2 has prayed for eviction of the Petitioner (Defendant No.1 herein) and for realization of arrear rent and damages.

5. Plaintiff in CS No.550 of 2022 (Opposite Party No.1 herein) claims that the suit house has been rented out to the present Petitioner by her through

her son/Defendant No.2. But in the suit filed by the Petitioner, i.e., CS No.1964 of 2019, he has admitted that Defendant No.2 is the landlord and is

trying to evict him forcibly. Although the Plaintiff-Opposite Party No. 1 in the present suit alleges that rent in respect of the suit house has not been

paid since 2019 and the Petitioner is unauthorizedly occupying the suit house, but the Petitioner in his suit asserted that he is paying rent to Opposite

Party No.2 regularly. It is his submission that the issue as to who is the landlord is substantially the same issue in both the suits. As such, the

proceeding in CS No.550 of 2022 should be stayed, lest if the present suit is decreed in favour of the Opposite Party No.1 the same will operate as res

judicata to the previous one.

5.1 It is his submission that in CS No.1964 of 2019, the Defendant has not yet filed the written statement and is not cooperating in the proceeding of

the suit. Thus, the previous suit could not proceed. He also relied upon the case of National Institute of Mental Health and Neuro Sciences Vs. C.

Parameshwara, reported in (2005) 2 SCC 256, wherein it is held as under:-

“ 8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same

matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on

issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the

civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent

jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section

10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in

cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are ""the matter in issue is directly and substantially in issue

in the previous instituted suit. The words ""directly and substantially in issue"" are used in contra-distinction to the words ""incidentally or collaterally in issue"".

Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the

proceedings is identical.

He, therefore, submits that the impugned order is not sustainable and is liable to be set aside and further proceeding of CS No.550 of 2022 should be

stayed till disposal of CS No.1964 of 2019.

6. Mr. Mishra, learned counsel for Opposite Party No.1 submits that the matter in controversy in both the suits are completely different. Decision in

the present suit will not operate as res judicata in the previously instituted suit. It is his submission that although the suit land is the same in both the

suits, but the suit instituted by the Petitioner, i.e., CS No.1964 of 2019, is in respect of the first floor of the building standing over the suit land and the

present suit has been filed in respect of the ground floor of the said building. He also drew attention of this Court to para-5 of the plaint of the present

suit, in which it is pleaded as under:-

5. That, the Plaintiff was willing to rent out the ground floor of her house over Plot No- 672, Saheed Nagar, Bhubaneswar and the present Defendant

approached the Plaintiff as well as the Defendant No 2 to take the ground floor on monthly rental basis as a result of which a lease agreement was executed on

5th November 2016 between the Defendant No. 1 and Proforma Defendant who is the son of the Plaintiff and the lease agreement was commenced from 1 Day of

November 2016 and subject to condition to continue for a period of three years and monthly rent was fixed for Rs- 40,000/-

He, therefore, submits that the subject matter in both the suits are not one and the same. Learned trial Court has rightly held that issue involved in the

present suit is not directly and substantially the same in the previously instituted suit. Hence, learned trial Court has committed no error in rejecting the

petition. It is also submitted that initially the Petitioner filed an application under Order VII Rule 11 CPC alleging that the Plaintiff (Opposite Party

No.1) is not the landlord and the suit is not maintainable. The said application was rejected. In order to circumvent the said order, the present

application has been filed after commencement of the trial and at a stage where the evidence of Plaintiff and Defendant No.2 has already been

closed. He, therefore, submits that the CMP is liable to be dismissed.

7. Mr. Pal, learned counsel for Opposite Party No.2 submits and supports the submission of Mr. Mishra, learned counsel for Opposite Party No.1. He

further submits that the issue with regard to payment of rent is not an issue in the previously instituted suit. Rather, disposal of the present suit will

facilitate disposal of the previously instituted suit. In view of the above, he submits that there is no infirmity in the impugned order under Annexure-7.

8. Considering the submissions made by learned counsel for the parties, this Court finds that CS No.1964 of 2019 is filed with prayer for permanent

prohibitory injunction to restrain the present Defendant No.2 from evicting the Petitioner forcibly. The Plaintiff in CS No.550 of 2022 is not a party to

the previously instituted suit by the Petitioner. The schedule of the property in CS No.1964 of 2019 is as under:-

“SCHEDULE OF PROPERTY

Dist.- Khordha, Tahasil “ Bhubaneswar, PS:

Sahidnagar, Mouza- Sahidnagar, Khata No.660, Plot

No.672, Area Ac.0.105 decs. On which the 1st floor house is existing.

Bounded by:- North Road

South Conservancy Lane

East Plot No.473

West Road“

Thus, the property relates to 1st floor of Plot No.672 under Khata No.660 to an extent of Ac.0.105 decimal situated in Sahid Nagar mouza under

Bhubaneswar Tahasil in the district of Khordha.

8.1 In CS No.550 of 2022, the suit property has been described as under:-

“SUIT SCHEDULE PROPERTY

Schedule “ A

Rooms measuring an area Ac.0.103.30 dec. (4500 sqft.), Length 75 ft., Breadth 60 ft., Bounded by “ East-Plot No.473, West-Road, North -Road, South-

Conservancy Lane, Mouza Bhubaneswar, PS: Saheed Nagar, Bhubaneswar-751007, Dist-Khordha

Schedule- B

Sketch Map is attached in separate sheet of the premises“

But the schedule of property, if read with averments made in para-5, it appears that it only relates to the ground floor of the said building. Thus, it

prima facie appears that the suit property in both the suits are not one and the same. Further, it is submitted that no written statement has been filed in

CS No.1964 of 2019. The Plaintiff as Petitioner has admitted that he is a tenant under the Defendant No.2. In the present suit, i.e., CS No.550 of

2022, it is alleged by the Opposite Party No.1 that the suit premises was leased out in favour of the Petitioner through the Opposite Party

No.2/Defendant No.2. Thus, the present suit has been filed for eviction and realization of arrear rent and damages. Therefore, it is apparent that the

issue involved in both the suits are distinct. Some incidental and collateral matters may be the same in both the suits, but that does not attract the

provision under Section 10 CPC and thus cannot be a ground to stay further proceedings of CS No.550 of 2022, as held in the case of National

Institute of Mental Health and Neuro Sciences (supra). It further appears that the evidence from the side of Plaintiff as well as Defendant No.2 in

CS No.550 of 2022 has already been completed and the suit is posted for adducing evidence on behalf of Defendant No.1/Petitioner. At that stage,

such an application was filed for stay of further proceeding of the suit.

9. In view of the discussions made above, the issues in both the suits being distinct and not directly and substantially the same, the provision under

Section 10 CPC is not at all applicable to the instant case, as rightly held by learned trial Court.

10. Accordingly, the CMP being devoid of any merit stands dismissed.

11. Interim order dated 30th October, 2023 passed in IA No.1269 of 2023 stands vacated.

Issue urgent certified copy of the judgment on proper application..

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