

## **Rakesh Sakseria - Revisionist @HASH Smt. Kumud and Others**

**Court:** Uttarakhand High Court

**Date of Decision:** Sept. 7, 2016

**Acts Referred:** Civil Procedure Code, 1908 (CPC) - Section 10

**Citation:** (2017) 169 AIC 938 : (2016) 119 ALR 327 : (2017) 1 ARC 411 : (2017) 1 CivCC 726 : (2017) 134 RD 87

**Hon'ble Judges:** Servesh Kumar Gupta, J.

**Bench:** Single Bench

**Advocate:** Mr. Sudhir Kumar, Advocate, for the Revisionist; Mr. J.P. Joshi, Senior Advocate, assisted by Mr. Sushil Vashistha, Advocate, for the Respondents 1 and 2.

**Final Decision:** Allowed

### **Judgement**

Servesh Kumar Gupta, J. - There is delay of 15 days in filing this revision. Having perused the delay condonation application (CLMA

3864/2016) and considering the reasons furnished therein, I allow this application and condone the delay.

2. Having heard learned Counsel of either parties, the facts, as have emerged out, reveal that Original Suit No. 46/2011, launched by Smt. Kumud

and Smt. Kusum Lata Goel against Rakesh Sakseria (revisionist herein), was pending adjudication. Defendant no. 1 Mahant Govind Das was also

a party because he was the vendor of the property, in question, which was purchased by these two ladies under the four sale deeds executed on

19.11.2006 and 21.11.2006.

3. The relief sought in such suit was a declaratory decree pertaining to such property which was the subject matter of the sale deeds nay the direction

of injunction against Mr. Rakesh Sakseria.

4. Another Original Suit 1/2014 was initiated by Mr. Rakesh Sakseria against these two ladies impleading Mahant Govind Das as a proforma

defendant in nature and the relief claimed was the declaration of all these four sale deeds to be null and void. Besides, the injunction decree was

also sought. Learned Trial Judge vide impugned order dated 9.1.2015 has stayed the subsequent suit under Section 10 CPC for the reason that

parties in both the litigation are the same, nay the matter in controversy is also, directly and substantially, the same.

5. Feeling aggrieved, Mr. Rakesh Sakseria has come up before this Court by way of present revision.

6. Learned Counsel of the revisionist has drawn attention of this Court towards Order IV-A, which was added by Uttar Pradesh Government by

way of State Amendment w.e.f. 1.1.1977. It contemplates about the consolidation of suits and proceedings. For the sake of convenience, it is

reproduced as under:

#### ORDER IV-A

##### Consolidation of Cases

1. Consolidation of suits and proceedings. When two or more suits or proceedings are pending in the same court, and the court is of opinion that it

is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the

evidence in all or any such suits or proceedings

7. On the other hand, learned Senior Counsel on behalf of the respondents 1 & 2 has vehemently insisted upon the mandatory nature of Section 10

of the CPC for staying the subsequent suit in such circumstances. He has also argued that Section 10 CPC is in the nature of substantial law, while

Order IV-A, so added by the State Government, is the procedural in nature. Therefore, learned Court below was justified in staying the

subsequent suit initiated by Mr. Rakesh Sakseria.

8. I have perused the impugned order as well as the prayer clause of each suit and feel that if the Original Suit No. 1/2014, instituted by Mr.

Rakesh Sakseria shall remain stayed, then it will not adjudicate the prayer seeking declaration of all these four sale deeds to be null and void.

Therefore, in the fitness of things, it would have been more appropriate to consolidate this Original Suit No. 1/2014 along with the Original Suit

No. 46/2011 making the previously instituted suit as the leading one.

9. In view of what has been set forth above, I allow this revision and set aside the impugned order with the directions, as have been depicted

hereinabove.

10. Miscellaneous application (CLMA 8166/2016) also stands disposed of.