

(1990) 10 KL CK 0061

High Court Of Kerala

Case No: C.R.P. 1734/90

M.S. Balasubramanian

APPELLANT

Vs

Sakthivel

RESPONDENT

Date of Decision: Oct. 22, 1990**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 10

Hon'ble Judges: M.M. Pareed Pillay, J**Bench:** Single Bench**Advocate:** P.K. Balasubramanian, for the Appellant; S. Sankara Subban, for the Respondent

Judgement

M.M. Pareed Pillay, J.

Revision Petitioner is the Plaintiff in O.S. 196 of 1983 of the Munsiff's Court, Chittur. He filed I.A. 1937 of 1990 seeking stay of further proceedings in the suit u/s 10 CPC on the ground that S-A. 187 of 1987 pending before the High Court and O.S. 576 of 1981 pending before the Sub Court, Palghat involve the very questions to be decided in the suit. The learned Munsiff dismissed the petition holding that O.S. 196 of 1985 is filed against the Defendant who is not in any way concerned with the other suits and so there is no need to allow the petition.

2. The very purpose of Section 10 CPC is to avoid conflict of decisions in two or more suits in which the matter in issue is substantially the same. From a reading of Section 10 it can be seen that it is really mandatory and leaves no discretion to the Court in respect of stay of suits when a party makes the motion for the same. Section starts with the interdict that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and materially in issue in a formerly instituted suit between the same parties. The essential conditions for the application of Section 10 are as follows:

(1) There must be two suits - one instituted earlier in point of time and one later;

(2) The matter in issue in the later suit should also be directly and substantially in issue in the earlier instituted suit;

(3) such suits should be between the same parties or between parties under whom they or any of them claim litigating under the same title, and

(4) such suit is pending either in the same Court or in any other Court in India having jurisdiction to grant the relief claimed or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court.

3. One of the prime tests for determination of the question whether the later suit is to be stayed u/s 10 CPC is to ascertain whether the finding of the earlier suit would operate as res judicata in the later suit. If the matter in issue in the later suit is not directly and substantially in issue in the earlier suit, Section 10 is not attracted. It is also very essential that the suits should be between the same parties or between parties under whom they or any of them claim litigating under the same title. Complete identity of the subject matter or parties is not required. Merely because an additional Defendant is there in one suit it cannot be said that Section 10 is not attracted, if all other conditions satisfy the requirements u/s 10. If the decision in one suit has telling effect on the later suit, it is a case where it can be said that the matter in issue in both the suits is directly and substantially the same. In [Shaw Wallace and Co. Ltd. Vs. Bholanath Mandanlal Sherawala and Others](#), a Division Bench of the Calcutta High Court held thus:

The expression, "the matter in issue" in Section 10 has reference to the entire subject-matter in controversy between the parties and a mere identity of some of the issues in both the suits is not sufficient to attract Section 10 and unless the decision of the suit operates as res judicata in the other suit it cannot be said that the matter in issue is directly and substantially the same in both the suits, that is to say, the decision in one suit must non-suit the other suit before it can be said that the matter in issue in both the suits is directly and substantially the same.

4. Viewed in the above legal principles, it cannot be held that the impugned order is bad. Though Plaintiff claims exclusive right to take water through B schedule property in O.S. 576 of 1981 which is stayed by S.A. 187 of 1987, the suit filed against the Respondent (O.S. 196 of 1985) cannot be stayed u/s 10 CPC as the suits are not between the same parties. In O.S. 196 of 1985 Defendant-Respondent claims independent right. He is not claiming any right under the Defendant in the previous suits. S.A. 187 of 1987 arose out of O.S. 236 of 1985 which is a simple suit for injunction. O.S. 196 of 1985 is a suit for declaration of revision Petitioner's right and also for injunction. As the Respondent is not claiming any right as the legal representative of the Defendant in the previous suits, it cannot be held that the revision Petitioner has made out a case to stay proceedings in O.S. 196 of 1985 u/s 10 Code of Civil Procedure.

There is no merit in the C.R.P. and hence the same is dismissed. There is no order as to costs.