

(2009) 08 MP CK 0063

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Rajesh Singh and Others

APPELLANT

Vs

Manoj Kumar

RESPONDENT

Date of Decision: Aug. 21, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10
- Constitution of India, 1950 - Article 227

Citation: AIR 2010 MP 16 : (2009) ILR (MP) 2906 : (2009) 4 MPHT 373 : (2010) 3 MPJR 157 : (2009) 4 MPLJ 458

Hon'ble Judges: Subhash Samvatsar, J; A.P. Shrivastava, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.P. Shrivastava, J.

This writ petition is filed by the defendant challenging the order dated 15-4-2009 passed by Second Additional District Judge to the Court of First Additional District Judge, Gwalior in Civil Suit Mo. 59-A/06 whereby the Trial Court has rejected the application filed by the present petitioner defendant u/s 10 of the CPC for stay of subsequent suit.

Facts of the case, briefly stated are that the respondent plaintiff had filed a civil suit for declaration in respect of the property in dispute against the present defendant in the month of November, 2005. Present petitioner filed his written statement in the said suit denying the title of the plaintiff. Plaintiff, therefore, filed another suit u/s 12 (1) (a), (c) and (n) of the M.P. Accommodation Control Act, 1961 against the present petitioner for ejectment. In that suit, the defendant filed his written statement and again denied the title of the plaintiff. In such circumstances, in both the suits, one of

the issues was common that whether the plaintiff is the owner of the suit property. In view of this common issue, present petitioner/defendant filed an application u/s 10, CPC for staying the subsequent suit, i.e., the suit for ejectment. Said application stood dismissed by the order which is impugned in this petition under Article 227 of the Constitution of India.

Shri P.C. Chandil, learned Counsel for the petitioner-defendant contended that for staying a suit u/s 10 of CPC, issue in two suits must be substantially the same. In the present case, substantial issue which is common in both the suits is the owner of the property in question. Since this substantial issue is common in both the suits, the subsequent suit filed by the plaintiff deserves to be stayed. To buttress his argument, learned Counsel lay hands on a decision of this Court in the case of *Munnalal v. Purushottamlal* 1962 J LJ SN 60, wherein this Court has held that for staying the suit u/s 10 of CPC complete identity of the two suits is not necessary and substantial identity of the subject matter or material issue is sufficient to attract the provisions of Section 10 of CPC, if said section is attracted, then it is mandatory for the Court to stay the proceedings in the subsequent suit.

Another judgment in the case of *M.G. Upadhyaya v. R. Verma* 1962 J LJ 120, is relied upon by the learned Counsel for the petitioner in which this Court has held that the real question is whether the matter in issue in the subsequent suit is directly and substantially in issue in the earlier suit. The test for determine whether or not the matter is directly and substantially in issue in both the suits, in case a decision is given in the first suit determining the issue whether that would operate as res judicata for the subsequent suit.

In case of *Parvatibai v. Ram Prasad* 1979 MPLJ SN 66, this Court has again laid down that when decision in the previous suit operates as res judicata in the subsequent suit, then Section 10 of CPC is attracted.

In the case of *Bhalchand v. Shrichand* 1982 MPRCJ 123, this Court has again held that when in both the suits the parties are the same and material issues involved are practically identical, then the suit should be stayed.

Thus, according to the learned Counsel for the petitioner-defendant, present suit be stayed because in previous suit, if it is held that the plaintiff is not the owner of the property, then in subsequent suit, decree cannot be passed against him.

In reply to the arguments raised by the learned Counsel for the petitioner, Shri Aniket Naik, learned Counsel for the respondent-plaintiff contended that in a suit for ejectment, title is incidental and for passing a decree u/s 12 (1) (a), (c) and (n) of the M.P. Accommodation Control Act, 1961 (for brevity, "the Act"), it is not necessary that the plaintiff should be the owner of the property. He contended that for getting a decree for ejectment on these grounds, the plaintiff must be landlord and it is not required that he should be the owner of the property.

To support his contention, learned Counsel for the respondent-plaintiff has drawn attention of this Court to the definition of "landlord" as defined in Section 2 (b) of the Act. As per the said definition, "landlord" means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

Thus, according to the learned Counsel for the respondent plaintiff, the definition of landlord is wider than the owner and the person who is collecting rent is also a landlord. So according to the learned Counsel, even if in the previous suit it is held that the plaintiff is not the owner of the property, still, a decree for ejectment can be passed in favour of the respondent plaintiff, if it is proved that he is the landlord within the meaning of Section 2 (b) of the Act.

The Apex Court in the case of [M.M. Quasim Vs. Manohar Lal Sharma and others](#), , has considered the definition of "landlord" and held that the definition of landlord in Section 2 (d) of the Bihar Building (Lease, Rent and Eviction) Control Act is couched in very wide language; however, this wide amplitude of expression has been cut down in case of personal requirement whether the provision of law requires that for getting a decree on the ground of personal requirement, plaintiff should be owner of the property. But so far as other grounds are concerned, if it is held that the plaintiff is a landlord, he is entitled to a decree for ejectment against a tenant.

Similarly, the Apex Court in the case of Radha Devi v. Deep Narayan Mandal and Ors. : (2003) 11 SCC 759, has held that if the eviction proceedings are initiated during the pendency of the title suit filed in respect of other premises between the same parties, then the subsequent suit cannot be stayed u/s 10 of CPC. According to the Apex Court, in a suit filed by the landlord against a tenant the question of title is not substantial but is incidental for passing a degree for ejectment and in such circumstances, the suit for ejectment cannot be stayed:

In the case of [National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara](#), , the Apex Court has laid down that 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 previously instituted suit. The words "directly and substantially in issue" are used in contradistinction 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.

In a suit for ejectment which is not filed u/s 12 (1) (e) and (f) of the Act, the question of title is not directly and substantially in issue but is incidental and collateral and therefore, Section 10 of CPC will not be attracted.

In view of the aforesaid discussions, the Court below has rightly refused to stay the suit filed by the landlord for ejectment on the ground of Section 12(1) (a), (c) and (n) of the Act since for getting a decree for eviction of these grounds, plaintiff is not required to prove that he is the owner of the property. He can get a decree for ejectment if it is proved that he is the landlord within the definition of Section 2 (b) of the Act.

Resultantly, present petition is without any merit and is dismissed.