

07.07.2026
Court No.2
Item No.49
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

CO 2258 of 2024

**Chaitali Dey & Ors.
Vs.
Subhas Dutta**

Mr. Jayanta Samanta
Mrs. Paromita Malakar (Dutta)
Mr. Parikshit Goswami
Mrs. Satabdi Bhattacharya

...for the petitioners

Mr. Ashis Kumar Chowdhury (via VC)
Mr. Sudip Jana
Mr. Rohan Paul

...for the opposite party

1. Both the parties filed written notes of argument.
2. Present petition has been filed challenging the order dated 2nd March, 2024 passed by the learned Civil Judge (Jr. Div.), 4th Court at Howrah in Title Suit No. 444 of 2021 whereby the application under Section 10 CPC filed by the petitioners / defendants was dismissed. Briefly stated that the petitioners / defendants herein filed a suit bearing no. 22 of 2021 for partition, declaration, injunction and other consequential relief against the plaintiff / opposite party. The subject matter of the suit are stated to be flat / unit no. 302 and flat / unit no. 304 in premises No. 105, Sri

Arobindo Road, Salkia, Police Station – Golabari, Howrah.

3. While this suit was pending, the plaintiff / opposite party filed a suit (Title Suit No. 444 / 2021) for eviction, ejectment and mesne profit against the petitioners / defendants in respect of flat no. 304 at 105, Sri Arobindo Road, Salkia, Police Station – Golabari, Howrah. The petitioners / defendants filed an application under Section 10 CPC praying for the stay of the suit. Learned Trial Court after hearing both the parties dismissed the application, inter alia, holding that the opposite party / plaintiff has filed a suit for ejectment on the basis of settlement deed of the 2018 and the defendants / petitioners had filed one counter claim challenging the deed of settlement and, therefore, the trial of the suits shall determine the title of parties to the suit. Learned Trial Court further, inter alia, held that the decree passed in the instant suit shall not operate as *res judicata* to the suit for partition or vice versa. Learned Trial Court further, inter alia, held that Section 10 shall not apply if some of the issues of two suits are interlinked in respect of some facts.

4. Learned counsel for the petitioners submits that the impugned order suffers from serious legal infirmities. Learned counsel submits that the petitioners / defendants herein had earlier filed a suit

for partition of flat no. 302 and flat no. 304 claiming the joint ownership over the two flats of the petitioners / defendants herein and the plaintiff / opposite party. Learned counsel submits that subsequently the opposite party / plaintiff filed a suit for ejectment and mesne profit in respect of one of these properties that is flat no. 304. Learned counsel, therefore, submits that the subject matter in both the suits are identical and if in the suit for partition the petitioners / defendants is declared as the co-owner then the subsequent suit would become redundant. Learned counsel submits that it would be a futile exercise and, therefore, the same may be stayed till the decision of earlier suit for partition.

5. Per contra, learned counsel for the opposite party / plaintiff submits that in the present set of facts Section 10 CPC is not applicable as the subject matter in both the suits is not same. Learned counsel submits that the issues involved in the two cases are also different. Learned counsel, therefore, submits that the petition is liable to be dismissed.

6. In **Usha & Anr. Vs. Shahjad Bi @ Sejad & Ors.** in **SLP (c) No(s). 7617 / 2019**, Hon'ble Supreme Court vide order dated 1st April, 2024 discussed in detail the implication of Section 10 CPC. In this case also the respondent no. 6 therein had filed civil suit no.

15A/2011 seeking, inter alia, declaration that the sale deed dated 12th December, 2008 is null and void. During the pendency of this suit, the appellant therein filed civil suit no. 158A/2013 seeking eviction of respondent no.6 in the aforesaid suit as well as the other tenants. In the eviction suit an application under Section 10 CPC was filed, which was allowed by the learned Trial Court and affirmed by the High court.

7. The Apex Court after taking into account Section 10 CPC, inter alia, held as under.

“The object of this Section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. This Section deals with a rule of procedure. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The crucial words in Section 10 are "the matter in issue is directly and substantially in issue" in the previously instituted suit. The aforesaid words are different from "incidentally or collaterally in issue". Therefore, there must be identity of the matter in issue in both the suits inasmuch as the subject matter in both the proceedings is identical. But even on a consideration of the two suits, even if the property in respect of two suits is one and the same but the issues are separate and there is no identity at all with regard to the cause of action and also the reliefs that are sought in both the suits, the subsequent suit between the same parties, is not liable to be stayed under Section 10. Not only the matter in issue in the second suit should also be directly and substantially in issue in the first suit, but that the second suit must be for the same relief as that claimed in the first suit. Therefore, it is not only the identical subject matter but also the relief claimed in both suits that determine the applicability of Section 10. Thus, for instance, if the first suit is for partition and separate possession of the suit scheduled property and the second suit is for ejection of a tenant from the same, then Section 10 would not apply. (Emphasis supplied)

In the instant case, the detailed narration of facts and contentions would not call for reiteration. Admittedly, two suits have been filed, one, by respondent No.6 herein seeking a declaratory relief

insofar as the sale deed dated 12.12.2008 is concerned in respect of the suit scheduled property bearing House No. 44, Bima Nagar, Indore, M.P. It is in respect of the very same property that the appellants herein have sought for eviction of respondent No.6 herein (defendant) in the aforementioned suit as well as other tenants. The issues which arise in the suits for declaration of title and that the sale deed is void are quite distinct from the issues which arise in a suit seeking eviction of tenants. Although the said suits may be in respect of the very same scheduled property, nevertheless, the issues do not overlap and are not directly and substantially the same. They may overlap only incidentally.

In the circumstances, we find that the Trial Court was not right in allowing the application filed by respondent No.6 herein seeking stay of proceedings in Civil Suit No.158A/2013. Instead, on the said application, the Trial Court could have ordered that both the suits could be clubbed together and common evidence could have been let in as the issues to be raised in the respective suits are in respect of the same subject matter and between the same parties to a certain extent and disposed of the two suits in accordance with law.

It is needless to observe that any decree passed in the suit filed by respondent No.6 herein would have a consequential bearing in the suit filed by the appellants herein for eviction of respondent No.6 herein and other tenants from suit scheduled property. Hence, the suits could be tried and disposed of simultaneously.”

8. Bare perusal of this, makes it clear that Section 10 CPC would be attracted where the whole of the subject matter in both the suit is identical. The core requirement that, “the matter in issue is directly and substantially in issue” is different from “incidentally or collaterally in issue”. The discretion under Section 10 CPC cannot be invoked if the cause of action and relief claimed are different in both the suits.

9. In the facts and circumstances, I consider that the judgment of the Supreme Court in ***Usha & Anr. (supra)***

is squarely applicable and, therefore, there is no scope to interfere in the order of the learned Trial Court. However, since the decision of one case may have a consequences on the other case, it would be in the interest of the justice if the Title Suit no. 444 of 2021 titled as Sri Subhas Datta Vs. Smt. Chaitali Dey & Ors. and Title Suit no. 22 of 2021 titled as Smt. Chaitali Dey & Anr. Vs. Sri Subhas Datta are tried by the court of competent jurisdiction to avoid any jurisdictional issue. Title suit no. 444 of 2021 titled as Sri Subhas Datta Vs. Smt. Chaitali Dey & Ors. may be transferred to the court of learned 2nd Civil Judge (Sr. Div.), Howrah who is trying Title Suit no. 22 of 2021 titled as Smt. Chaitali Dey & Ors. Vs. Sri Subhas Datta. Both the suits be clubbed together and common evidence be led in respect of the issues between the parties in both the suits. Both the suits be also disposed of simultaneously expeditiously in accordance with law. Both the parties shall not seek any unnecessary adjournment.

10. With the above observations, the present petition stands disposed of.

11. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)