

**CONSTITUTIONAL WRIT****Present: The Hon'ble Mr. Justice Syamal Kanti Chakrabarti****Judgement on : 18.06.2010****C.O. No. 2782 of 2009****Sunil Kumar Mondal & Ors.****Vs****Jitendra Kumar Das & Ors.****POINTS**

RES SUB-JUDICE – The parties to both suits are identical and both the contending parties have claimed their right, title and possession over the same disputed property – Whether the second suit is barred by Res Sub-Judice – Code of Civil Procedure 1908, S 10.

**FACTS**

The present writ petitioners being defendant nos. 1 to 3 in the title suit of 83 of 1993 are contesting the suit by filing written statement .During pendency of the said suit the present writ petitioners have instituted another suit against the present opposite parties being title suit no. 104 of 2006 before the Learned Civil Judge (Junior Division), Bolepur . It is further contended by them that the contents of the previous suit as well as the written statement and that of the later suit being identical it is quite expedient to conduct analogous hearing of both the suits and for this purpose they filed an application under Section 151 CPC before the Learned Trial Court for analogous hearing of the same. But such prayer was considered and rejected by the Learned Trial Court .Then they moved the Hon'ble Court challenging the legality and propriety of the said order of the Learned Civil Judge (Junior Division) in C. O. No. 990 of 2007. The Hon'ble Court while disposing of the said writ petition under Article 227 of the Constitution by order dated 28.02.2008 was pleased to direct the Learned Court below to use its discretion in the matter at a subsequent

stage and if it is of the opinion that for the ends of justice the two suits are required to be heard together the Learned Court will pass appropriate order. Accordingly the writ petitioners again filed an application under Section 151 CPC with similar prayer before the Learned Trial Court. The Learned Trial Court adhered to its earlier decision and disposed of their said second application filed on 16.02.2009 and rejected the prayer on 30.07.2009.

Being aggrieved by and dissatisfied with such finding of the Learned Trial Court dated 30.07.2009 the present writ petitioner have filed the instant petition contending inter alia, that the circumstances prevailing on 09.02.2007 while they moved the C. O. No. 990 of 2007 before this Court are quite different from the circumstances that led them to prefer the same prayer under Section 151 CPC on 16.02.2009 which was again rejected on 30.07.2009 by the Learned Trial Court without appreciating the subsequent facts and circumstances justifying analogous trial of the suits.

**HELD**

The parties to Title Suit No. 83 of 1993 and the Title Suit No. 104 of 2006 are identical and both the contending parties have claimed their right, title and possession over the same disputed property on the grounds stated therein. It is also noted that the subsequent suit has also been filed before the same Court and the claim of the present writ petitioners who are plaintiffs in Title Suit No. 104 of 2006 could have been set out in the form of counter claim in the earlier suit though they have claimed it in their written statement but that cannot be a ground for multiplicity of proceedings with an intention to drag the litigation in the arena of never ending civil litigation which is an abuse of

the doctrine of *res judicata* contemplated in Section 11 of the CPC as well as abuse of the process of law.

Para 6

The object of Section 10 C.P.C. is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action and the same subject matter obviously to avoid possibility of two contradictory verdicts of two Courts in respect of the same relief. This section also intends to protect a person from multiplicity of proceedings and to give effect to the rule of *res judicata*.

Para 8

Having regard to the contents of the plaint in both the suits, nature of reliefs claimed by the contending parties therein and their status, The Learned trial Court holds ample jurisdiction to decide the matter in issue in T. S. 83 of 1993 and to grant the reliefs to the contending parties and as such the subsequent Title Suit No. 104 of 2006 filed in the same Court *ipso facto* is barred by the doctrine of *res sub judice*. If such prayer is entertained the object and purport of Section 10 CPC will be frustrated.

Para 9

For the Petitioners : Mr. Haradhan Mondal.

For the Respondents : Mr. J. R. Chatterjee.

**Syamal Kanti Chakrabarti, J.:**

In the present writ petition under Article 227 of the Constitution of India the writ petitioners Sunil Kumar Mondal and Ors. have claimed that the opposite party nos. 1 to 8 filed a title suit being no. 83 of 1993 in the Court of the Learned Civil Judge (Junior Division), Bolepur, District Birbhum praying for declaration of their right, title and interest in respect of 1 Satak of land out of 6 Sataks in plot no. 1183, GL No. 144 under Panchpara Mouza, Block Labhpur, District Birbhum with prayer for injunction restraining the defendant nos. 1 to 3 from dispossessing them from 'Ka' scheduled property though they admitted in the plaint that the names of the defendant nos. 1 and 2 have been duly recorded in the relevant record of rights as occupier of the same by constructing a hut (*Chalaghar*) thereon. The present writ petitioners being defendant nos. 1 to 3 in the said title suit are contesting the suit by filing written statement denying the aforesaid allegation. During pendency of the said suit the present writ petitioners have instituted another suit against the present opposite parties being title suit no. 104 of 2006 before the Learned Civil Judge (Junior Division), Bolepur for a declaration of their right, title and interest in respect of the same suit land with prayer for injunction restraining the defendants therein to refrain from disturbing the peaceful possession of the said land by them.

2. It is further contended by them that the contents of the previous suit as well as the written statement and that of the later suit being identical it is quite expedient to conduct analogous hearing of both the suits and for this purpose they filed an application under Section 151 CPC before the Learned Trial Court for analogous hearing of the same. But such prayer was considered and rejected by the Learned Trial Court on 11.02.2006. Then they moved the Hon'ble Court challenging the legality and propriety of the said

order of the Learned Civil Judge (Junior Division) in C. O. No. 990 of 2007. The Hon'ble Court while disposing of the said writ petition under Article 227 of the Constitution by order dated 28.02.2008 was pleased to direct the Learned Court below to use its discretion in the matter at a subsequent stage and if it is of the opinion that for the ends of justice the two suits are required to be heard together the Learned Court will pass appropriate order. Accordingly the writ petitioners again filed an application under Section 151 CPC with similar prayer before the Learned Trial Court. The Learned Trial Court adhered to its earlier decision and disposed of their said second application filed on 16.02.2009 and rejected the prayer on 30.07.2009.

3. Being aggrieved by and dissatisfied with such finding of the Learned Trial Court dated 30.07.2009 the present writ petitioner have filed the instant petition contending inter alia, that the circumstances prevailing on 09.02.2007 while they moved the C. O. No. 990 of 2007 before this Court are quite different from the circumstances that led them to prefer the same prayer under Section 151 CPC on 16.02.2009 which was again rejected on 30.07.2009 by the Learned Trial Court without appreciating the subsequent facts and circumstances justifying analogous trial of the suits.
4. Learned lawyer for the respondents has claimed that apprehending their defeat in the earlier suit filed by them in 1993 which is now at the argument stage the present writ petitioners being defendants of the earlier suit have filed the subsequent suit on the similar grounds which are in fact set out in their written statement already filed in 1994 for adjudication of the Learned Trial Court. There has not been any change of circumstances that can lead to the fragmentation of their claims made in 1994 by filing

another title suit being no. 104 of 2006. Therefore, the Learned Trial Judge has rightly rejected their prayer which should not be interfered with.

5. Having had Learned Lawyers for both the parties and on perusal of the plaints of both the suits I find that the parties to the suits, subject matter of the suit and claim of the respective parties for adjudication by the Court are identical. It does not require any separate suit for adjudication of the claims of the present writ petitioners pending disposal of the earlier suit. Learned Trial Court while considering the petition for analogous hearing has observed that only to cause delay in the instant suit which is pending since 1993 and now has reached to its final stage and to harass adversary the said petition has been filed and as such he has rejected the same with cost.
  
6. I agree with the Learned Trial Court that the parties to Title Suit No. 83 of 1993 and the Title Suit No. 104 of 2006 are identical and both the contending parties have claimed their right, title and possession over the same disputed property on the grounds stated therein. It is also noted that the subsequent suit has also been filed before the same Court and the claim of the present writ petitioners who are plaintiffs in Title Suit No. 104 of 2006 could have been set out in the form of counter claim in the earlier suit though they have claimed it in their written statement but that cannot be a ground for multiplicity of proceedings with an intention to drag the litigation in the arena of never ending civil litigation which is an abuse of the doctrine of *res judicata* contemplated in Section 11 of the CPC as well as abuse of the process of law.

7. In considering the prayer of the present writ petitioners I should like to place on record the provision of the Section 10 of the CPC which is palpably a bar to the entertaining of such frivolous prayer. For the sake of convenience the said provision is quoted below.:

*“Section 10 – No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they or any to them claimed, litigating under the same title, where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed or in any Court beyond the limits of India established or constituted by the Central Government and having like jurisdiction or before the Supreme Court.”*

8. Obviously the object of such provision is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action and the same subject matter obviously to avoid possibility of two contradictory verdicts of two Courts in respect of the same relief. This section also intends to protect a person from multiplicity of proceedings and to give effect to the rule of *res judicata*.
9. Having regard to the contents of the plaint in both the suits, nature of reliefs claimed by the contending parties therein and their status, I hold that the Learned trial Court holds ample jurisdiction to decide the matter in issue in T. S. 83 of 1993 and to grant the reliefs to the contending parties and as such the subsequent Title Suit No. 104 of 2006 filed in the same Court *ipso facto* is barred by the doctrine of *res sub judice*. If such prayer is entertained the object and purport of Section 10 CPC will be frustrated.

Therefore, the Learned Trial Court has rightly rejected the prayer of the present writ petitioner which is neither illegal nor improper and accordingly I hold that the impugned order passed by the Learned Trial Court dated 30.07.2009 does not suffer from any illegality or impropriety which should be interfered with.

10. Therefore, I hold that there is no merit in this revisional application which is accordingly dismissed with cost of Rs. 3,400/- payable to the respondents herein.
11. In view of long pendency the Learned Trial Court is accordingly directed to proceed with the Title Suit No. 83 of 1993 and to dispose of the same as expeditiously as possible preferable within a period of 2 months from the date of communication of the order.
12. Urgent photostat copy of this order, if applied for, be given to all the parties upon compliance of all necessary formalities.

**(Syamal Kanti Chakrabarti, J.)**