

RAJASTHAN HIGH COURT

Ramesh Minglani

Vs.

Special Judge, NDPS Cases, Sri Ganganagar

Civil Writ Petn. No. 1059 of 2006

(Dinesh Maheshwari, J.)

08.03.2006

ORDER

Dinesh Maheshwari, J.

1. Having heard learned counsel for the petitioners and having perused the material placed on record, this Court is satisfied that the learned trial Court has not committed any illegality or irregularity in passing the impugned order dated 21-1-2006 (Annexure-6) and in rejecting the prayer for stay of the suit proceedings under Section 10 of the Civil Procedure Code ('CPC'); and this writ petition being totally devoid of substance deserves to be rejected.

2. Brief facts relevant for the present purpose are that the petitioners are defendants in a suit for declaration and perpetual injunction filed by the respondent No. 2. A comprehension of the plaint averments (Annex. 1) makes it evident that the dispute relates to a piece of land situated at 7 E Chhoti, Tehsil *Sriganganagar* in Murraba No. 14, Khatedar of the said land, Rawata Ram son of Mana Ram, sold 2 bighas of land through his power of attorney Rahul Chhabra on 17-11-1998 to Mahendra Singh and Hansraj; and in such sale, the land in dispute comprised in Kila No. 23/2 admeasuring 5 biswas and 20 biswansi was included; mutation was effected in the name of the purchasers and thereafter the said purchasers, Mahendra Singh and Hansraj, sold the land to the plaintiff (respondent No. 2) on 10-8-1999 and it was duly mutated in her name too. It appears that the same power of attorney of Rawata Ram executed another sale deed on 15-10-1998 for a land in the same Murraba No. 14 admeasuring 2 bighas 19 biswas 20 biswansi to the defendant No. 1 Ramesh Miglani (since deceased and represented by his legal representatives, petitioners No. 1/1 to 1/5). The point of dispute has arisen on the said power of attorney executing deed of rectification on 1-5-1999 in relation to the land sold to the defendant No. 1 and in the said deed, the disputed land of Kila No. 23/2 admeasuring 5 biswas 20 biswansi was also got included apart from other parcels of land in Murraba No. 14. The plaintiff, respondent No. 2 Smt. Shashi Goyal appears to have filed a revenue suit for perpetual injunction

before the Sub-Divisional Officer, *Sriganganagar* on 3-12-2002 against the same defendant, Ramesh Miglani; and it further appears that the said defendant has also filed a suit in the same revenue Court for declaration of his khatedari rights under Sections 88 and 188 of the Rajasthan Tenancy Act and for cancellation of the mutation made in favour of the present respondent No. 2 in which it has, inter alia, been alleged that he had entered into an agreement for purchase of the land in question as back as on 29-11-1989.

3. Therefore, the status of pending litigation before the revenue Court is that there is a suit prosecuted by the present petitioners for declaration of khatedari rights in relation to the said land of Kila No. 23/2; another is the suit filed by the present respondent No. 2 for perpetual injunction against the present petitioners in relation to the same disputed land.

4. The present suit before the Civil Court has been filed by the plaintiff- respondent No. 2 Smt. Shashi Goyal for the relief that the alleged deed of rectification dated 1-5-1999 be declared inoperative or be cancelled in relation to the land of Kila No. 23. The petitioners have contended that the present suit was liable to be stayed under Section 10, C.P.C. as the matter in issue about the validity of the deed of rectification was already in issue in the previously instituted suit before the Sub-Divisional Officer, *Sriganganagar*, and thereupon issue No. 4 has been framed that reads thus,-

(Vernacular matter omitted - Ed.)

5. By the impugned order dated 21-1-2006 (Annexure-6) the learned trial Court has proceeded to decide the questions involved in the said issue No. 4 with the observations that although both the suits were based on the same facts between the same parties but merely on that count, the present suit was not liable to be stayed because the relief that has been sought in the present suit cannot be granted by a revenue Court.

6. Assailing the order dated 21-1-2006, learned counsel Mr. C.S. Kotwani appearing for the petitioners has vehemently contended that the controversy involved in the present suit is directly pending adjudication in the previously instituted suits before competent revenue Court; that the right to relief as claimed by the present plaintiff directly relates to the same deed of rectification; and the issues involved in previously instituted suits are substantially the same as sought to be raised in the present suit. While relying on Section 10, C.P.C., learned counsel has made elaborate submissions that the present suit is liable to be stayed and the learned trial Court was entirely in error in deciding issue No. 4 against the petitioners. The submissions by the learned counsel for the petitioners remain totally bereft of substance.

7. Section 10 of the Civil Procedure Code reads thus,-

"10. Stay of suit.- 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 parties under whom they or any of them claim 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 continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

8. It has been clarified by the Courts umpteen number of times that the underlying object of the rule contained in Section 10, C.P.C. is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief and the obvious policy is to confine the litigation to one; obviating the possibility of two contradictory verdicts of two Courts in respect of same relief. It is apparent that before the principles underlying Section 10 could be applied, the requirements are that there must be two suits, one previously instituted and other subsequent; that the matter in issue in both the suits must be the same; that previously instituted suit must be pending in a Court in India; that the Court trying previous suit has jurisdiction also to grant relief asked for in the subsequent suit; and that the parties to both the suits must be the same or litigating under the same title. It is for the simultaneous existence of these conditions that the later suit could be stayed. The essential core condition of the Court dealing with previously instituted suit to be having jurisdiction to grant relief asked for in the present suit before the Civil Court is obviously missing in the present case and in that view of the matter, the learned trial Court has been perfectly justified in deciding issue No. 4 against the defendant.

9. In the present suit pending in the Civil Court, a precise relief has been claimed by the plaintiff that the rectification deed dated 1-5-1999 be declared inconsequential and inoperative against her rights and, if necessary, the said deed be cancelled in relation to 5 biswas and 20 biswansi of land of Kila No. 23. The plaintiff has claimed in the present suit thus,-

(Vernacular matter omitted - Ed.)

10. The relief aforesaid is directly referable to the scheme of Chapter V of the Specific Relief Act and such a relief cannot be granted by the Revenue Court and no such suit is cognizable by any revenue Court as is apparent from Section 207 and Schedule-III of the Rajasthan Tenancy Act. When the revenue Court cannot grant the relief claimed

in the present suit, the pendency of previously institutes suit or suits in the revenue Court is not a bar for proceeding with the present suit. It appears that the plaintiff-petitioner having been faced with the rectification deed dated 1-5-1999 and the rights professed by the defendants-petitioners on its basis, was not in a position to ignore the said rectification deed as void *ab initio* so as to maintain her claim before the revenue Courts only and seems to have, therefore, chosen the remedy before the Civil Court. Be that as it may, without expressing any opinion on the merits of the case, this Court is clearly of the view that so far stay of the present suit is concerned, the same has been asked for on entirely untenable grounds and has rightly been refused.

11. In the aforesaid view of the matter, no case for interference under Article 227 of the Constitution of India is made out.

12. The writ petition fails and is, therefore, rejected.

Petition dismissed.