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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 980/2022 & CM APPL. 40877/2022, CM APPL.  
40878/2022, CM APPL. 40879/2022

AMITA VASHISHT ..... Petitioner

Through: Mr. Tushar Mahajan and  
Mr. Rohan Yadav, Advs.

versus

TARUN VEDI ..... Respondent

Through: Mr. Vikrant Gupta, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**J U D G M E N T ( O R A L )**

% **16.09.2022**

1. The petitioner is the sister of the respondent. The impugned order, dated 5<sup>th</sup> August 2022, has been passed by the learned Additional District Judge (“the learned ADJ”) in Suit Civ DJ 699/2021, on an application filed by the petitioner, as the defendant in the suit, under Section 10 of the Code of Civil Procedure, 1908 (CPC). The application stands rejected.

**Facts**

2. Civ DJ 699/2021, filed by the respondent against the petitioner, sought (i) a decree of possession, evicting the petitioner from the property situated at B-404, Lakeview Apartments, Paschim Vihar, Delhi (“the suit property”) and restoration of possession of the suit property to the respondent, (ii) unauthorized occupation

charges/mesne profits along with interest and (iii) a decree of permanent injunction, restraining the petitioner from creating any third party rights in respect of the suit property.

**3.** A brief précis of the recitals in the plaint may be provided thus. The suit property was allotted by the Delhi Development Authority (DDA) to K K Vedi, the father of the parties in this petition and the husband of Sudershan Vedi. K K Vedi expired on 2<sup>nd</sup> May 2005. During his lifetime, K K Vedi executed a registered Sale Deed dated 22<sup>nd</sup> November 2003, whereby the suit property was sold by him to the respondent Tarun Vedi. The respondent Tarun Vedi, thereby, became the sole and exclusive owner of the suit property. He, however, allowed his mother Sudershan Vedi to continue to reside in the suit property on a gratuitous basis. Sudershan Vedi expired on 24<sup>th</sup> September 2019. At that time, the respondent Tarun Vedi was living abroad. He returned to India to perform the last rites of his mother Sudershan Vedi and found that the petitioner Amita Vashisht and her husband S.K. Vashisht were obstructing ingress, by the respondent, into the suit property. The respondent also lodged a police complaint in that regard. Claiming that, in view of the registered Sale Deed dated 22<sup>nd</sup> November 2003 executed by K K Vedi in favour of the respondent, no person other than the respondent had any right over the suit property, the respondent instituted the aforesaid CS DJ 699/2021 against the petitioner Amita Vashisht, seeking the reliefs already set out in para 2 *supra*.

**4.** The petitioner Amita Vashisht moved an application, under

Section 10 of the CPC, in the present suit CS DJ 699/2021, seeking stay of trial in the suit. The application was predicated on an earlier suit CS SCJ 612321/2016 (*Sudershan Vedi v. Tarun Vedi*), instituted by Sudershan Vedi (the mother of the parties) against the respondent Tarun Vedi.

5. The petitioner is not a party in the said suit, though, consequent on the demise of Sudershan Vedi, the petitioner moved an application under Order XXII of the CPC, seeking to be substituted in her place. Learned Counsel are *ad idem* that the said application is yet to be allowed.

6. CS SCJ 612321/2016, as instituted by Sudershan Vedi against the respondent Tarun Vedi, sought (i) a declaration that the Sale Deed dated 22 November 2003, on which the respondent places reliance in CS DJ 699/2021, was void *ab initio*, (ii) a restraint against the Sub-Divisional Magistrate (SDM) registering any further transaction in respect of the suit property, on the basis of the said Sale Deed and (iii) a restraint against Tarun Vedi creating any third party interest in respect of the suit property.

7. The plaint in CS SCJ 612321/2016 asserted thus.

7.1 Sudershan Vedi was appointed by her husband K K Vedi, *vide* General Power of Attorney dated 25<sup>th</sup> May 2000, as his lawful attorney to deal with, *inter alia*, the suit property. Additionally, by Will dated 9<sup>th</sup> May 2000, K K Vedi bequeathed all his property,

movable as well as immovable, in favour of Sudershan Vedi. Resultantly, on the death of K K Vedi, on 2<sup>nd</sup> May 2005, Sudershan Vedi became the sole and exclusive owner of his movable and immovable properties, including the suit property.

**7.2** Sudershan Vedi, as the GPA holder of K K Vedi, was fraudulently made, by the respondent Tarun Vedi, to execute the Sale Deed dated 22<sup>nd</sup> November 2003. She did so, out of love and affection for respondent Tarun Vedi. No consideration had been paid by Tarun Vedi against the said Sale Deed, though the Sale Deed erroneously recorded payment of consideration of ₹ 2,50,000/-. The Sale Deed was admittedly registered in November 2003 itself. Claiming that, by virtue of the Will purportedly executed in her favour by K K Vedi on 9<sup>th</sup> May 2000, she was the sole and exclusive owner of the suit property, Sudershan Vedi, as already noted, sought a declaration that the Sale Deed dated 22<sup>nd</sup> November 2003 was *void ab initio*, apart from attendant reliefs.

**8.** The petitioner, as the defendant in CS DJ 699/2021, as already noted, sought a stay of trial of the said suit, pending the outcome of CS SCJ 612321/2016.

**9.** The said application has been rejected by the learned ADJ *vide* the impugned order dated 5<sup>th</sup> August 2022.

**10.** Paras 9 to 13 of the impugned order, which contain the reasons for rejection of the petitioner's application, may be reproduced as

under:

“9. From perusal of the aforesaid section, it is hereby clear that the following essential conditions for the application of the Section 10 of the CPC are necessary:-

- (a) there must be two pending suits on same matter,
- (b) these must be between the same parties or parties under whom they or any of them claim to litigate under the same title,
- (c) the matter in issue must be directly and substantially same in both the suits,
- (d) the suits must be pending before the competent Court or Courts,
- (e) the suit which shall be stayed is the subsequently instituted suit,

10. Now, applying the same principles to the present case in hand, the subject matter and the matter in issue in earlier suit and the present suit are different as in the previous suit the relief was of declaration and in the present suit is of possession, mesne profits and permanent injunction. Further, the defendant in the present suit till date is not a party to the earlier suit and the application for substitution of defendants is pending and the defendant in the present suit has not been made a party to the earlier suit. Thus, the present application is **premature** in time as defendant in the present suit till date is not on record as a party to the earlier suit.

11. It is also profitable to rely on the observations made by Hon'ble Supreme Court of India in *National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara*<sup>1</sup> which is mentioned as under:-

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10

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<sup>1</sup> (2005) 2 SCC 256

suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. 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 previous 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 the subject-matter in both the proceedings is identical.”

12. It is also relevant to mention here that the other judgments as relied by the parties in support and against the present application are not applicable to the facts and circumstances of the present case.

13. Thus, on the basis of the aforesaid, in the present case at this stage, Section 10 CPC has no application and consequently, the present application is dismissed.”

**11** Assailing the said order, this petition under Article 227 of the Constitution of India has been instituted by the petitioner before this Court.

**12** I have heard Mr. Tushar Mahajan, learned Counsel for the petitioner and Mr. Vikrant Gupta, learned Counsel for the respondent.

**13** Mr. Mahajan advances the following contentions, to sustain his submission that trial of the suit instituted by the respondent ought to have been stayed:

(i) Mr Mahajan submits that the basic test for deciding whether trial of a suit, later instituted, was required to be stayed pending the outcome of a suit earlier instituted, under Section 10 of the CPC, was whether the outcome of the earlier suit would operate as *res judicata* in the later suit. Though his client is yet to be impleaded as a party in CS SCJ 612321/2016, Mr. Mahajan submits that, as his client is the successor-in-interest of the plaintiff Sudershan Bedi in CS SCJ 612321/2016, and has moved an application under Order XXII of the CPC, seeking to be substituted in her place in the said suit which, in his estimation, is likely to be allowed, his client can maintain the application under Section 10 of the CPC and seek stay of trial of CS DJ 699/2021. For this purpose, Mr. Mahajan has placed emphasis on the words “or parties under whom they or any of them claim litigating under the same title,” in Section 10 of the CPC, which 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 have 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.”

Mr. Mahajan has placed reliance, in this context, on the judgment of a coordinate Bench of this Court, authored by Hima Kohli, J., as she then was, in *Brahm Prakash v. Chando Devi*<sup>2</sup>.

(iii) Mr. Mahajan further submits that the issue in consideration in CS SCJ 612321/2016 is identical to the issue in controversy in the present case in CS DJ 699/2021. Both suits, he submits, revolve around the disputed Sale Deed dated 2<sup>nd</sup> November 2003. The respondent Tarun Vedi, in the present suit CS DJ 699/2021, seeks relief entirely on the basis of the said Sale Deed. The question of whether the said Sale Deed was genuine, or was void *ab initio*, is the issue squarely in consideration in CS SCJ 612321/2016. There is, therefore, complete identity of issue in the two suits which, too, submits Mr. Mahajan, is a good ground to stay the trial in CS DJ 699/2021, pending the outcome of CS SCJ 612321/2016.

(iv) Mr. Mahajan further submits that if CS SCJ 612321/2016 were to be allowed, the respondent Tarun Vedi, as the plaintiff in CS DJ 699/2021, would be non-suited. The learned ADJ, he submits, has failed to note this fact.

(v) Finally, relaying on the decision of a coordinate Bench of this Court in *Pratap Narayan Mathur v. MCD*<sup>3</sup>, Mr. Mahajan

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<sup>2</sup> MANU/DE/4414/2010

<sup>3</sup> 2014 SCC OnLine Del 403



submits that the reliefs sought in the present suit CS DJ 699/2021 is consequent on the relief sought in the earlier suit CS SCJ 612321/2016.

**14** For all these reasons, Mr. Mahajan submits that the trial of CS DJ 699/2021 was required to be stayed pending the outcome of CS SCJ 612321/2016 and that, in rejecting the petitioner's application, the learned ADJ has materially erred.

**15** Mr. Mittal, learned Counsel for the respondent, contesting the stand canvassed by Mr. Mahajan, submits that the parties in CS SCJ 612321/2016 and CS DJ 699/2021 are different. He submits that, till date, the petitioner is not a party in CS SCJ 612321/2016 and, therefore, one of the prime requirements of Section 10 of the CPC does not stand satisfied. Apropos the reliance, on the clause "or between parties under whom they or any of them claim litigating under the same claim" on which Mr. Mahajan places reliance, Mr. Mittal submits that the clause is further conditioned by the caveat that the parties should be litigating under the same title. As such, even on that ground he submits that the petitioner's application under Section 10 was not even maintainable.

**16** On merits, Mr. Mittal relies on the findings contained in the impugned order dated 5<sup>th</sup> August 2022 passed by the learned ADJ. He submits that, CS SCJ 612321/2016 was a suit for declaration of the sale deed as *void ab initio*, whereas CS DJ 699/2021 is a suit for recovery of possession. The suits cannot, therefore, be said to be

identical or involving identical causes of action. Mr. Mittal, therefore, submits that there is no justification, whatsoever, to interfere with the impugned order passed by the learned ADJ.

## **Analysis**

**17** I have heard learned Counsel for both sides and considered the material on record.

**18** The law relating to Section 10 has been authoritatively expounded by the Supreme Court in its decisions in *National Institute of Mental Health & Neuro Sciences*<sup>1</sup> (“*NIMHANS*”, hereinafter) and *Aspi Jal v. Khushroo Rustom Dadyburjor*<sup>4</sup> (“*Aspi Jal*”, hereinafter).

**19** Suits, pending before different courts, may often have overlapping issues. The result of one suit may often influence the outcome of another. The CPC contains various provisions to deal with such contingencies. *Inter alia*, where suits involved issues which are overlapping and where the outcome of one suit may materially affect another, the suits may be consolidated, in exercise of the jurisdiction vested by Section 151 of the CPC. The power to consolidate, as held in *Mahalaxmi Cooperative Housing Society Ltd v. Ashabhai Atmaram Patel*<sup>5</sup> is, in fact, intended “to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action”. “Consolidation of suits is”, as the same decision

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<sup>4</sup> (2013) 4 SCC 333

<sup>5</sup> (2013) 4 SCC 404

holds, “ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials”. Para 18 of the report in *Prem Lala Nahata v. Chandi Prasad Sikaria*<sup>6</sup> delineates, precisely, the power of consolidation, as well as the occasion for its exercise, thus:

“18. It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. *The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits.* (See Halsbury's Laws of England, Vol. 37, para 69.)”

**20** As against this, Section 10 of the CPC is a somewhat drastic provision, inasmuch as it brings the trial in the later suit to a complete halt. It eviscerates, therefore, in a manner of speaking, the right of the litigant to expeditious trial. The corridors of the court not being the most habitable of places, where one would choose to linger long, Section 10 is required to be construed strictly.

**21** It is not necessary for this Court to enter into the niceties of the provision. As already noted, the provision has been examined in

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<sup>6</sup> (2007) 2 SCC 551

considerable detail by the Supreme Court in its decisions in *NIMHANS<sup>1</sup>* and *Aspi Jal<sup>4</sup>*, which are regarded as authorities on the issue.

22 Para 8 of *NIMHANS<sup>1</sup>* and paras 9, 11 and 12 of *Aspi Jal<sup>4</sup>* read thus:

***NIMHANS<sup>1</sup>*:**

“8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. 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 previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction 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.”

***Aspi Jal<sup>4</sup>***

“9. Section 10 of the Code which is relevant for the purpose reads as follows:

**“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.”

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. *The basic purpose and the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief.* This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

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11. *In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in*

*the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.*

12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, *many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue.”*

(Emphasis supplied)

**23** No doubt, both the decisions have underscored, as a “fundamental test”, for the purposes of Section 10 of the CPC, being whether, on a final decision reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Even so, both the decisions go on to observe that, in order for Section 10 to be applied, *there must be complete identity of subject matter in both suits.* It has been emphasized, in both the decisions, that the key expression in

Section 10 are “directly and substantially in issue”, which have been contra-distinguished from the expression “incidentally or collaterally in issue”.

**24** “Therefore”, as held in both the decisions “Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings is identical”.

**25** This aspect stands further clarified in *Aspi Jal*<sup>4</sup>. In para 9 of the report in *Aspi Jal*<sup>4</sup>, the Supreme Court has held that “the basic purpose and the underline object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of “*same cause of action, same subject matter and the same relief.*” As a result, the effort, as per the said decision, as “to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the *same relief* and is aimed to protect the defendants from multiplicity of proceedings”.

**26** Interestingly, in *Aspi Jal*<sup>4</sup>, the parties in all suits were the same. The courts in which the earlier suits had been instituted were competent to grant the relief sought in the latter suit. Even so, the Supreme Court observed that the issue remained to be adjudicated “as to whether the matter in issue is also directly and substantially an issue in previously instituted suit”. Underscoring, once again, the importance of the expression “directly and substantially in issue”, the

Supreme Court went on to hold that, even if “many of the matters in issue are common, including the issue of whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code the entire subject matter of the two suits must be the same”. It was categorically held that Section 10 “will not apply where a few of the matters are common and will apply only when the entire subject matter of the controversy is same”.

**27** Given the rigidity of this test, the fate of the present petition – and, indeed, of the petitioner’s application under Section 10 – was pre-ordained.

**28** The reliefs sought in CS SCJ 612321/2016 and Civ DJ 699/2021 is obviously different. CS SCJ 612321/2016 sought a declaration that the Sale Deed dated 21<sup>st</sup> November 2003 was void *ab initio*. CS DJ 699/2021 sought a decree of possession, evicting the petitioner from the suit property. By no stretch of imagination can it be said that the reliefs sought in the two suits were identical.

**29** Apart from sameness of relief, the two other indicia, required to be cumulatively satisfied in order for the trial of a later suit to be stayed under Section 10, is identity of cause of action and identity of subject matter.

**30** Neither cause of action, nor subject matter, of the two suits, can be said to be the same. The cause of action in CS SCJ 612321/2016 related to the validity of the Sale Deed dated 22<sup>nd</sup> November 2003.



The challenge was predicated on a Will dated 9<sup>th</sup> May 2000, purportedly executed by K K Vedi, bequeathing all his movable and immovable properties in favour of Sudershan Vedi, the mother of the parties in the present case. That Will forms no part of the cause of action in CS DJ 699/2021. Predicated on the said Will, Sudershan Vedi claimed, in CS SCJ 612321/2016, to be the sole, absolute and exclusive owner of the suit property. She also claimed to have executed the Sale Deed dated 22<sup>nd</sup> November 2003 as the General Power Attorney holder of K K Vedi, on account of fraud perpetrated by the respondent. It is further alleged, in the said plaint, that, when Sudershan Vedi went to the office of Sub-Registrar to execute a Will, Tarun Vedi, by fraud, made a sale deed in his favour.

31 “Cause of action” is defined in various decisions of the Supreme Court, as the bundle of facts which a plaintiff would be required to prove in order to obtain a decree in his favour. *Kusum Ingots & Alloys Ltd v. U.O.I.*<sup>7</sup> explained the concept thus:

“6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.”

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<sup>7</sup> (2004) 6 SCC 254

**32** The facts which Sudershan Vedi would have to prove, in order to obtain a decree in her favour in CS SCJ 612321/2016 would, *inter alia*, include the genuineness of the Will dated 25<sup>th</sup> May 2000 as well as the allegation that the Sale Deed dated 22<sup>nd</sup> November 2003 was in fact executed by her, as the GPA holder of K K Vedi, on account of fraud committed by Tarun Vedi.

**33** Quite obviously, these facts do not form part of cause of action in CS DJ 699/2021. In the present case, the respondent claims to be the sole and absolute owner of the suit property, undoubtedly, under the Sale Deed dated 22<sup>nd</sup> November 2003. The claim in the present suit is that the respondent allowed his mother Sudershan Vedi to reside in the suit property gratuitously, out of love and affection and that, consequent on her demise, the petitioner was seeking to prevent access, of the respondent, to the suit property.

**34** The facts which the respondent would have to establish, in order to succeed in CS DJ 699/2021 are, therefore, clearly different from the facts which Sudershan Vedi would have to establish to succeed in CS SCJ 612321/2016. The cause of action in both the suits cannot, therefore, be said to be the same.

**35** In the aforesaid circumstances, the requisite ingredients requiring cumulative satisfaction, for a party to obtain relief under Section 10 of the CPC, being identity of cause of action, subject matter, and relief, are not identical in CS SCJ 612321/2016 and CS DJ 699/2021.

**36** The mere fact that the Sale Deed dated 22<sup>nd</sup> November 2003, on which the respondent, as the plaintiff in CS DJ 699/2021 places reliance, is called into question in CS SCJ 612321/2016, cannot be said to be sufficient as a ground to stay the trial of CS DJ 699/2021 pending CS SCJ 612321/2016, given the structure of Section 10 of the CPC and the judgments of the Supreme Court in *NIMHANS<sup>1</sup>* and *ASPI Jal<sup>4</sup>*.

**37** As I have found the petitioner to be disentitled to relief on an application of Section 10, and the law laid down in that regard by the Supreme Court, to the facts of the present case, it is not necessary to enter into the aspect of identity of parties in the two cases. Nor do I deem it necessary to advert to the judgments of this Court on the point, in view of the clear exposition of the law as contained in the aforesaid decisions of the Supreme Court.

**38** In view of the aforesaid, this petition is dismissed *in limine*, with no order as to costs. Miscellaneous applications are also disposed of.

**C.HARI SHANKAR, J**

**SEPTEMBER 16, 2022**

*r.bararia*