

**Reserved on : 05.06.2025**  
**Pronounced on : 10.06.2025**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10<sup>TH</sup> DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.28964 OF 2024 (GM – CPC)

**BETWEEN:**

SMT. KUSUMA KUMARI  
W/O LATE SRI S.VENKATESHWARLU  
AGED ABOUT 67 YEARS.

REPRESENTED BY  
GENERAL POWER OF ATTORNEY HOLDER  
SRI S. SRAVAN CHAITANYA  
S/O LATE SRI S.VENKATESWARLU,  
AGED ABOUT 41 YEARS,  
RESIDING AT: NO. 189/A,  
MLA COLONY ROAD,  
NO.12, BANJARA HILLS,  
HYDERABAD – 500 034.

... PETITIONER

(BY SMT.NALINA MAYEGOWDA, SR.ADVOCATE FOR  
SMT.ANUSHA B.REDDY, ADVOCATE)

**AND:**

1 . DR . HAFEEZUR RAHAMAN  
S/O LATE A. ABDUL AZEEZ

AGED ABOUT 83 YEARS.

- 2 . SRI SHAFEEQUR RAHMAN  
S/O LATE A. ABDUL AZEEZ,  
AGED ABOUT 77 YEARS,

BOTH RESPONDENT NO.1 AND 2 ARE  
RESIDING AT: 599, MINA 2<sup>ND</sup> MAIN,  
TEACHER'S COLONY, KORAMANGALA,  
BENGALURU – 560 034.

- 3 . SRI NAJEEBUR RAHMAN  
S/O LATE A. ABDUL AZEEZ,  
AGED ABOUT 69 YEARS,  
RESIDING AT: AREHALLI VILLAGE,  
BELUR TALUK,  
HASSAN - 573 101.

- 4 . MRS. KAMARUNNISA  
D/O LATE A.ABDUL AZEEZ,  
AGED ABOUT 94 YEARS.

- 5 . SMT. FARHATH HAYATH  
D/O LATE A ABDUL AZEEZ,  
W/O LATE C.R. MOHD. HAYATH,  
AGED ABOUT 75 YEARS.

RESPONDENT NO.4 AND 5 ARE  
RESIDING AT: AREHALLI VILLAGE,  
BELUR TALUK,  
HASSAN – 573 101.

REPRESENTED BY THEIR  
GENERAL POWER OF ATTORNEY HOLDER  
SRI NAJEEBUR RAHMAN,  
S/O LATE A. ABDUL AZEEZ,  
AGED ABOUT 74 YEARS,  
RESIDING AT: AREHALLI VILLAGE,

BELUR TALUK,  
HASSAN – 573 101.

- 6 . SRI SYED AFROZ  
S/O LATE SYED GHOUSE,  
AGED ABOUT 70 YEARS,  
RESIDING AT: AREHALLI VILLAGE,  
BELUR TALUK,  
HASSAN – 573 101.
- 7 . SRI SYED SHERAZ  
S/O LATE SYED GHOUSE AND  
LATE SMT. RAHAMATHUNNISA,  
AGED ABOUT 75 YEARS.
- 8 . SMT. SAIRA RAFATH  
D/O LATE SYED GHOUSE AND  
LATE SMT. RAHAMATHUNNISA,  
AGED ABOUT 54 YEARS.

RESPONDENT NO.7 AND 8 ARE  
RESIDING AT AREHALLI VILLAGE  
BELUR TALUK  
HASSAN – 573 101

REPRESENTED BY THEIR GPA HOLDER  
SYED AFROZ,  
S/O LATE SYED GHOUSE,  
AGED ABOUT 70 YEARS,  
RESIDING AT AREHALLI VILLAGE,  
BELUR TALUK,  
HASSAN – 573 101.

- 9 . SRI K.GANESH BABU  
S/O LATE SRI KRISHNAMURTHY  
AGED ABOUT 76 YEARS,  
NO. 26/1-1, 'CHAITANYA',  
2<sup>ND</sup> CROSS, M.T.LAYOUT,

13<sup>TH</sup> CROSS, BEHIND MES COLLEGE,  
BENGALURU – 560 053.

- 10 . SRI T.V.NARAYANAMURTHY,  
S/O T.V. VENKATARAMAIAH,  
AGED ABOUT 62 YEARS,  
RESIDING AT NO.7, 3<sup>RD</sup> CROSS,  
SHANKARAPURAM,  
BENGALURU – 560 004.
- 11 . SMT. PARIJAT PRAKASH,  
W/O P.N.PRAKASH,  
AGED MAJOR,  
RESIDING AT GANAKALLU VILLAGE,  
BENGALURU SOUTH TALUK,  
BENGALURU DISTRICT – 560 060.
- 12 . SMT. RAMAMMA,  
W/O LATE SONNE GOWDA,  
AGED ABOUT 68 YEARS,  
RESIDING AT GANAKALLU VILLAGE,  
Kengeri Hobli,  
BENGALURU SOUTH TALUK,  
BENGALURU DISTRICT – 560 060.
- 13 . SRI. GALICHOUDAPPA,  
S/O LATE GALLYAPPA,  
AGED ABOUT 75 YEARS,  
RESIDING AT GANAKALLU VILLAGE,  
Kengeri Hobli,  
BENGALURU SOUTH TALUK,  
BENGALURU DISTRICT – 560 060.

... RESPONDENTS

(BY SRI BIPIN HEGDE, ADVOCATE FOR R-1 TO R-8;  
SRI ANGAD KAMATH, ADVOCATE AND  
SRI K.B.S.MANIAN, ADVOCATE FOR R-9;

R-10 SERVED;  
NOTICE TO R-11 TO R-13 ARE DISPENSED WITH VIDE  
ORDER DATED 11.11.2024)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD 12.09.2024, PASSED BY THE XXIV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU, IN IA NO. 12 IN O.S NO. 9897/2006 AS PER ANNEXURE-B; ALLOW THE IA NO. 12 AS PER ANNEXURE-L FILED BY THE PETITIONER UNDER SECTION 10 OF THE CODE OF CIVIL PROCEDURE, 1908 AND STAY THE FURTHER PROCEEDINGS IN OS 9897/2006 UNTIL THE DISPOSAL OF PRIOR SUIT IN OS NO. 8729/2004 AS PER ANNEXURE P.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner/defendant No.2 in O.S.No.9897 of 2006 is before this Court calling in question an order dated 12-09-2024 by which the application filed by the petitioner in I.A.No.XII under Section 10 of the Code of Civil Procedure is rejected.

**2. FACTUAL PRELUDE:**

The saga begins with the assertion of the petitioner being in possession of the property bearing Site No.52 in Sy.No.17/2A which is said to be wrongly mentioned as Sy.No.3/3B having purchased it on 24-11-1994. The defendant No.2 along with others is said to be in peaceful possession of the property. This is said to be interfered with by respondents 1 to 9, the plaintiffs in the original suit. Owing to interference the petitioner files suit in O.S.No.8729 of 2004 seeking to protect her possession in respect of Sy.No.3/3B. The suit was instituted on 26-11-2004. On 13-11-2006 the 1<sup>st</sup> respondent along with others institute a comprehensive suit for declaration of title in O.S.No.9897 of 2006.

3. When things stood thus, the petitioner/defendant No.2 institutes another suit in O.S.No.3599 of 2008 seeking to rectify the description of the property in the sale deed dated 24-11-1994 from Sy.No.3/3B to Sy.No.17/2A. The rectification suit so filed by the petitioner/defendant No.2 comes to be dismissed on 18-06-2009. This dismissal becomes final. After the dismissal of O.S.No.3599 of

2008 an amendment application is filed to amend the plaint in O.S.No.8729 of 2004 insofar it concerns the survey number. It is amended from Sy.No.3/3B to Sy.No.17/2A. The suit is again amended by incorporating the relief of declaration on 08-09-2010. All these take place in O.S.No.8729 of 2004. After about 20 years of institution of the suit, the petitioner files an application under Section 10 of the CPC not in O.S.No.8729 of 2004, but in the comprehensive suit filed by the respondents/plaintiffs in O.S.No.9897 of 2006 contending that the two suits arise on the same cause of action and, therefore the proceedings in the later suit in O.S.No.9897 of 2006 be stayed. The concerned Court rejects the application in I.A.No.XII filed under Section 10 of the CPC in terms of its order dated 12-09-2024. In the same breath, the 2<sup>nd</sup> defendant files a miscellaneous petition under Section 24 of the CPC seeking to transfer and club both the suits in O.S.No.8729 of 2004 and O.S.No.9897 of 2006. During the pendency of the said miscellaneous petition, the present writ petition is preferred. This coordinate bench of this Court grants an interim order of stay on 04-11-2024. The stay was stay of suit in O.S.No.9897 of 2006. It appears that the miscellaneous petition filed for clubbing two suits

is dismissed during the pendency of the subject petition. It is at that stage the matter is heard with the consent of parties.

4. Heard Smt. Nalina Mayegowda, learned senior counsel appearing for the petitioner; Sri Bipin Hegde, learned counsel appearing for respondents 1 to 8 and Sri Angad Kamath, learned counsel appearing for respondent No.9.

5. The learned senior counsel **Smt. Nalina Mayegowda** would contend that the two suits arise out of the same cause of action. They concern the same survey number. The extent of land owned by the respondents/plaintiffs is 1 acre 5 guntas in which the petitioner holds 7 guntas. Therefore, the cause of action and the boundary description are all the same. In that light, Section 10 of the CPC would straightaway be applicable. She would seek the petition be allowed and the suit be stayed till a decision is arrived at in the 2004 suit filed by the petitioner, which would get concluded in a month or two. She would contend that the Court has fallen in error in rejecting the application.



6. Per contra, the learned counsel **Sri Angad Kamath** appearing for the plaintiffs/respondents would vehemently contend that Section 10 of the CPC is not even applicable in the case at hand. Section 10 application has to satisfy three ingredients viz., it should be between the same parties, it should be on the same cause of action and the relief sought should be substantially the same. He would contend that the prayers in both the cases are entirely different, parties are entirely different and boundaries are entirely different. The suit schedule property is of a different survey number. He would contend that, even according to the petitioner it is Sy.No.17/2A. The suit schedule property of the respondents/plaintiffs is Sy.No.3/3B. Therefore, even according to the 2<sup>nd</sup> defendant there is divergence in the identity of the land. If that be so, Section 10 would become clearly inapplicable. He would project on the conduct of parties. The suit filed by the petitioner is of the year 2004 and the suit filed by the respondents/plaintiffs is of the year 2006. Section 10 application comes 18 years after the institution of the suit and the suit is at an advanced stage and it is to be posted for judgment. After 18 years, without narrating entire facts, the subject petition is preferred and an interim order is

obtained. He would contend that this is in gross abuse of the process of law. When the two suits are completely different and having participated in the trial for close to 18 years, the present petition could not have been preferred. If at all the petitioner/defendant No.2 knew that the two suits are out of the same cause of action, nothing stopped her from filing Section 10 application in 2007 itself. He would seek dismissal of the petition imposing exemplary costs.

7. The learned senior counsel for the petitioner would join issue to contend that the suit filed by the petitioner in O.S.No.8729 of 2004 was dismissed for non-prosecution and was restored only in the year 2023 and, therefore, the application is filed now. No fault can be found in the filing of the application. There is no bar or limitation in law to file an application under Section 10 of the CPC.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts, link in the chain of events and dates are not in dispute. The claim of the petitioner is that she has purchased the property on 24-11-1994. The respondents/ plaintiffs began to disturb peaceful possession of the petitioner and, therefore comes a suit in O.S.No.8729 of 2004 for bare injunction. The property described in the scheme is as follows:

"SCHEDULE

All that piece part and parcel of the property bearing Site No.52, formed in Omkarnagar Lay-out out of Sy.No.3/3B, situated at Ganakal Village, Kengeri Hobli, Bangalore South Taluk, measuring:

East to West  $\frac{71' + 103'}{2}$

North to South  $\frac{93' + 96'}{2}$

Within the boundaries of:

East by: 25 feet road,  
West by: 80 feet road & Land of P.N. Bhat,  
North by: Land of P.N. Bhat at present private  
property,  
South by: Land of Suresh Hegde, now property No.53."

The schedule is to 7 guntas of land in Sy.No.3/3B of Ganakal Village, Kengeri Hobli. The respondents file a comprehensive suit in O.S.No.9897 of 2006 for declaration. The present petitioner is one of the defendants in the said suit. On 04-06-2008 the petitioner

files O.S.No.3599 of 2008 for rectification of schedule property in her sale deed insofar as it concerns Sy.No.3/3B to Sy.No.17/2A. The prayer sought in the said suit is as follows:

"Suit claim: The suit was filed on 4/6/08. For Judgment and decree against defendants,

- (a) Mandatory injunction directing the defendants to execute a deed of rectification by incorporating survey No 17/2A instead of survey No. 3/3B as depicted in the sale deed dated 24.11.94.
- (b) That in case defendants do not come forward to execute the deed of rectification appropriate orders may be passed directing the Registrar, City Civil Court, Bangalore to execute the deed of rectification on behalf of defendant
- c) Such other relief with casts of suit."

This suit comes to be dismissed by an order of the concerned Court on 18-06-2009. The reason so rendered for dismissal of the suit is as follows:

".... ....

೧೯) ಅಂಶ ೩:- ವಾದಿ ಈ ಕೇಸಿನಲ್ಲಿ ತಮ್ಮ ಕ್ರಯಪತ್ರದಲ್ಲಿ ಸರ್ವೆ ನಂಬರ್ ನಮೂದಿಸುವಲ್ಲಿ ತಪ್ಪಾಗಿ ಅದು ಸ.ನಂ. 3/B ಬದಲು 17/2A ಆಗಬೇಕಾಗಿತ್ತು, ಈ ಬಗ್ಗೆ ಪ್ರತಿವಾದಿಯರನ್ನು ಕೇಳಿಕೊಂಡರೂ ಕೂಡಾ ನಿರಾಕರಿಸುತ್ತಿದ್ದಾರೆ, ಆದ್ದರಿಂದ ಪ್ರತಿವಾದಿಯರ ವಿರುದ್ಧ Mandatory injunction ಡಿಕ್ರಿ ನೀಡಬೇಕೆಂದು ಕೇಳಿಕೊಂಡಿರುತ್ತಾರೆ. ನ್ಯಾಯಾಲಯವು ಅಂಶ ೧ ಮತ್ತು ೨ರ ಮೇಲೆ ನೀಡಿರುವ ಉತ್ತರದಿಂದಾಗಿ ಹಾಗೂ ಈ ಬಗ್ಗೆ ಮಾಡಿರುವ ಚರ್ಚೆಯಿಂದಾಗಿ ವಾದಿಯು ಕೋರಿರುವಂತೆ Rectification deed ಬರೆದುಕೊಡುವಂತೆ ಪ್ರತಿವಾದಿಯರಿಗೆ Mandatory injunction ನೀಡುವುದು ಸಾಧ್ಯವಿಲ್ಲವೆಂಬುದು ನ್ಯಾಯಾಲಯದ ಅಭಿಪ್ರಾಯವಾಗಿರುತ್ತದೆ. ಇದಲ್ಲದೆ ಈ ಕೇಸಿನಲ್ಲಿ ವಾದಿ

ವಾದಪತ್ರದಲ್ಲಿ ಸರ್ವೆ ನಂಬರ್ ನಮೂದಿಸುವಲ್ಲಿ ತಪ್ಪಾಗಿದೆ ಎಂಬ ಘೋಷಣೆಯ ಡಿಕ್ರಿಯನ್ನಾಗಲೀ ಅಥವಾ ತಮಗೆ ಪ್ರತಿವಾದಿಯರ ಪವರ್ ಆಫ್ ಅಟಾರ್ನಿಯಾದ ಮುನಿಸ್ವಾಮಿಯವರು ಮಾರಾಟ ಮಾಡಿರುವ ಆಸ್ತಿಯು ಸ.ನಂ. 3/3B ರಲ್ಲಿ ಇಲ್ಲ ಅದು ಸ.ನಂ. 17/2 ರಲ್ಲಿ ಇದೆ ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆಯಾಗಲೀ ಘೋಷಣೆಯ ಡಿಕ್ರಿಗಾಗಿ ಮನವಿ ಮಾಡಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ವಾದಿಯು ಕೋರಿರುವಂತೆ ಕೇವಲ Mandatory injunction ಡಿಕ್ರಿ ಹೊಂದಲು ಅರ್ಹರಲ್ಲವೆಂದು ಹೇಳಬಹುದಾಗಿರುತ್ತದೆ. ಈ ಕಾರಣಕ್ಕಾಗಿ ಅಂಶ ೩ನ್ನು ಕೂಡಾ ಇಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾ ಈ ಕೆಳಕಂಡ ಆದೇಶ ಮಾಡಲಾಗಿದೆ.

#### ಆ ದೇ ಶ

ವಾದಿಯ ದಾವೆಯನ್ನು ವಜಾ ಮಾಡಲಾಗಿದೆ.

ಖರ್ಚಿನ ಬಗ್ಗೆ ಆದೇಶವಿಲ್ಲ.

( ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನನ್ನ ಉತ್ತರೇಖನವನ್ನು ತೀರ್ಪುಬರಹಗಾರರು ತೆಗೆದುಕೊಂಡು ಕನ್ನಡ ಬೆರಳಚ್ಚು ಮಾಡಿದ ನಂತರ ನನ್ನಿಂದ ಪರಿಷ್ಕರಿಸಲ್ಪಟ್ಟು ಬಳಿಕ ಬಹಿರಂಗ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಿನಾಂಕ: 18-06-2009 ರಂದು ಘೋಷಿಸಿರುತ್ತೇನೆ. )”

The dismissal of this suit has become final. Therefore, the two suits were continued to be adjudicated in O.S.No.8729 of 2004 and O.S.No.9897 of 2006.

**10. 18 years passed by, in such a setting to invoke Section 10 of the CPC is to cast a pebble, in a river, long past its source** and notwithstanding the same, an application is filed under Section 10 of the CPC on 15-07-2024 seeking to arrest the suit in O.S.No.9897 of 2006 till conclusion of the suit in O.S.No.8729 of 2004. The concerned Court dismisses the said

application by the impugned order. The reason so rendered by the concerned Court reads as follows:

" .... .... "

REASONS

18. **Point No.1:** Here the suit of the plaintiffs is for Declaration and Permanent injunction with respect to suit schedule property bearing Sy.No.3/3 later assigned as Sy.No.3/3B as per Hissa Phodi measuring 1 Acre 5 guntas bounded by Naala at Eastern side, land bearing Sy.No.3/3A2 towards Western side, Halla towards Northern side and Land bearing Sy.No.3/3A1 towards Southern side.

19. It is the specific contention of plaintiffs that, Smt.Narayanamma had acquired 1 Acre 19 guntas of land in Sy.No.3/3 by virtue of registered Sale Deeds dated 16.11.1977 and 17.11.1977 with respect to 1 Acre 4 guntas and 15 guntas respectively and accordingly, same was entered in the Index of Land and her name was mutated. The specific contention of plaintiffs is that, defendants Nos.1 and 2 started illegally claiming that, the portion of suit schedule properties was purchased by them and tried to interfere in their lawful possession and enjoyment of suit schedule properties.

20. Plaintiff on verification noticed that, there is no R.T.C or Pahani with respect to Sy.No.3/3B1 claimed by defendants and that by colluding with revenue authorities and playing fraud, the defendants got entered their names fraudulently in the Revenue Records and on the basis of the same, they are claiming title and possession over the suit schedule properties and tried to dispossess the plaintiffs from the same. Hence, plaintiffs are constrained to file the present suit for Declaration of their ownership and for permanent injunction as they have purchased said properties vide registered Sale Deed dated 17.03.1979.

**21. On perusal of records, it is forthcoming that, after completion of evidence of both the parties, the matter was posted for Arguments and the arguments of**

**Learned Counsel for plaintiffs was heard for 3 days. When the matter was posted for Arguments of defendants, after taking two adjournments, defendant No.2 has come up with the present application for 'Stay' of the present suit on the ground that, the Original Suit in O.S.8729/ 2004 pending before CCH-13 between the same parties and same subject matter being the earlier suit is pending. Hence, in order to avoid conflicting decisions, it is necessary to stay the present suit etc.**

22. On perusal of Certified Copy of Plaint in O.S.No.8729/ 2004, it is forthcoming that, said suit is filed by defendant No.2 Smt. Kusuma Kumari against present plaintiffs and others and the property involved in said suit is Site No.52 formed in Omkar Nagar Layout of Sy.No.17/2A of Ganakal Village, Kengeri Hobli, bounded by 20 feet Road towards Eastern side, 80 feet and Land of P.N.Bhat towards Western side, Land of P.N.Bhat towards Northern Side and Land of Suresh Hegde towards Southern side. In the plaint, at Para 3(a), it is averred that, Residential site measuring 0.07 guntas referred as Sy.No.3/3B is actually situated in Sy.No.17/2A and plaintiff Smt.Kusuma Kumari has purchased the same vide registered Sale Deed dtd.24.11.1994 from Gali Chowdaiah and others represented by their G.P.A holder.

23. Here the suit schedule property mentioned in the plaint is as under:

All that piece and parcel of Agricultural land measuring an extent of 1 Acre 05 guntas being portion of Sy.No.3/3 later assigned with sub-division number as Sy.No.3/3B as per Hissa Phodi and Akar Bund of Survey Department (wrongly incorporated as Sy.No.3/3B1 in Revenue Records for some years and thereafter discontinued) situated at Ganakallu Village, Kengeri Hobli, Bangalore South Taluk, and bounded on:

East by	:	Naala (Halla)
West by	:	Land Sy.No.3/3A2
North by	:	Halla
South by	:	Land Sy.No.3/3A1

**24. On the other hand, defendant No.2 who is the applicant in this case claims to be the owner of Land**

bearing Sy.No.17/2A (wrongly mentioned as Sy.No.3/3B in Sale Deed dtd. 24.11.1994) site No.2, Omkar Layout, Ganakalu Village, Kengeri Hobli. However, nothing is forthcoming as to whether the property claimed by defendant No.2 is part and parcel of suit property and if so, where it is located etc.

25. Nowhere in said plaint, it is averred by said plaintiff i.e., defendant No.2 Kusuma Kumari that, her property is existing in the present suit schedule property. The suit schedule property described in the present plaint with the boundaries and the suit schedule property referred to by present defendant No.2 i.e., plaintiff in O.S.No.8729/ 2004 are entirely different with different measurement and boundaries and no where it is stated by said defendant No.2 as to in which portion of present suit schedule property, her property is located. Moreover, the evidence of both the parties was concluded much earlier and even argument of plaintiff's side was concluded in this suit. Hence, at this stage, there is no question of staying the present suit as it is the burden of plaintiff in O.S.No.8729/2004 to prove her case. Accordingly, for the aforesaid reasons, I answer point No.1 in the Negative.

26. **POINT No.3**:- In view of my findings on point Nos.1 and 2, I proceed to pass the following:

ORDER

IA No.XII filed on behalf of defendant No.2 under Section 10 of the Civil Procedure Code, 1908 is hereby rejected."

(Emphasis added)

The concerned Court, at paragraph 25 *supra*, holds that the suit schedule properties in both the suits are different and it is never the case of the petitioner that her property is listed in the 2006 suit



schedule property and, therefore, they are arising out of a different cause of action. This brings the petitioner to this Court. The co-ordinate bench grants an interim order of stay of the suit in O.S.No.9897 of 2006 in terms of the order dated 04-11-2024. The order reads as follows:

"ORAL ORDER

**Learned Senior counsel for the petitioner submits that the petitioner has filed a suit for declaration and injunction while the respondents have also filed a suit for declaration and injunction. She contends that the properties claimed by the petitioner and the respondents are substantially the same and therefore, the suit filed by the respondents being later, deserves to be stayed.**

**This is however, countered by the learned counsel for the caveator/respondent No.9 who contends that the properties claimed by the petitioner and the respondents are different.**

Since the issue warrants consideration, further proceedings in O.S.No.9897/2006 pending on the file of the XXIV Additional City Civil and Sessions Judge, Bengaluru is stayed till the next date of hearing.

List this petition on 11.11.2024."

(Emphasis supplied)

It was the submission of the learned senior counsel that both the suits are arising out of the same cause of action. Therefore, the proceedings in O.S.No.9897 of 2006 are to be stayed.

11. In the same breath, Miscellaneous Petition No.1169 of 2024 is preferred under Section 24 of the CPC, now contending that both the suits are to be tried by the same Court, therefore, they are to be clubbed and heard together. **The petitioner is thus caught and defeated in contradiction.** Before this Court/as well as the trial Court, it is contended that the two suits are from the same cause of action and before the concerned Court contention is advanced that both the suits are different and therefore they have to be tried together. The concerned Court dismisses the petition by its order dated 29-03-2025. The order reads as follows:

"ORDER

**This is a petition filed under Section 24 of CPC praying to transfer and club the suits in O.S.Nos. 8729 of 2004 pending before CCH-13 and 9897 of 2006 pending before CCH-6 to either of the Court.**

2. This court has dispensed with issuance of notice of the petition to Respondent Nos. 1, 2, 12 and 14 to 16 vide order dated 1-10-2024.

3. Respondent Nos. 3 to 10 have not chosen to appear before the Court and to contest the petition though on 28-10-2024 and 26-11-2024 a counsel appeared before the Court on their behalf and sought time to file power for them.

4. Respondent No.13 has appeared before the Court through their Counsel and submitted no objection to allow the petition.

5. Respondent No.11 has appeared before the Court through his counsel and filed his objection.

6. Heard learned counsel for petitioner and learned counsel for Respondent No.11.

**7. The petitioner who is the plaintiff in O.S.No.8729 of 2004, has maintained this petition praying to transfer and club the suits in O.S. Nos. 8729 of 2004 and 9897 of 2006 by assigning these cases to either of the Courts wherein they are pending on the ground that these suits are between same parties and in respect of very same property.**

8. The papers available on record go to show that the petitioner has maintained the suit in O.S.No.8729 of 2004 for the relief of declaration and injunction in respect of property bearing Site No.52 formed in Omkaranagara Lay-out in Sy.No.17/2A of Ganakal Village, Kengeri Hobli, Bengaluru South Taluk.

9. Respondent Nos. 3 to 9 and 11 have maintained the suit in O.S.No.9897 of 2006 for the relief of declaration and injunction in respect of land bearing Sy.No.3/3, later assigned with sub-division No.3/3B measuring 1 acre 5 guntas in Ganakallu Village, Kengeri Hobli, Bengaluru South Taluk. Thereby, it becomes prima-facie clear that these suits have been filed in respect of different properties.

10. Added to the above, admittedly the Petitioner herein had filed an application under Section 10 of CPC in O.S.No.9897 of 2006 praying to stay its further proceedings pending disposal of suit in O.S.No.8729 of 2004. It is also admitted that the said application came to be dismissed on 12-09-2024 with a specific observation that the properties involved in these suits are entirely different.

**11. Further, the respondent No.11 has produced a copy of Order dated 17-10-2019 passed in W.P.No.18265 of 2016 by Hon'ble High Court of Karnataka. It was a proceeding filed praying to quash Order dated 20-02-2016 in O.S.No.9897 of 2006. The contents of the said order go to show that in the said proceeding Hon'ble High**

**Court of Karnataka has made specific observation to the effect that "the right claimed by the second defendant (the Petitioner herein) is with respect to property i.e., other than the property claimed by the Plaintiffs and that if needed, the second defendant is aggrieved by non-identification of her property and by interference of the Plaintiffs with respect to the property claimed by the second Defendant, such a right or remedy is by way of separate proceeding and the same cannot be made subject matter of present proceeding."**

**12. Admittedly, the Petitioner has initiated a proceeding in O.S.No.8729 of 2004 to claim her right over the property much prior to filing of the suit in O.S.No.9897 of 2006. The suit of the Plaintiff came to be dismissed for non-prosecution on 16-01-2014 and the same came to be restored as per order dated 2-07-2022 passed in M.F.A. No. 5568 of 2022. In the above circumstances, this Court does not find any substance in the prayer of the Petitioner for transferring of the above referred suits or need of its clubbing for the purpose of common disposal. Hence, the following:**

ORDER

The petition filed under Section 24 of Code of Civil Procedure is dismissed.

Send a copy of the order to concerned Courts for information."

(Emphasis added)

In the light of the interim order granted by this Court, a suit that was going on for 18 long years has now been arrested, all on an erroneous plea of the petitioner/defendant No.2, who has misused the process of law.

12. In the light of the application filed under Section 10 of the CPC it is necessary to notice the tenor of Section 10 of the CPC. It 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."

(Emphasis supplied)

Section 10 of the CPC deals with stay of suits. It mandates that 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 on the same cause of action and the entire subject matter of suits being the same.

13. The learned counsel for the respondents has placed on record a comparative chart of difference between rights of parties

and issues framed in both the suits. I deem it appropriate to paraphrase the chart to the subject order. It reads as follows:

<u>"O.S.No.9897/2006</u>	<u>O.S.No.8729/2004</u>
<p><b>Parties to the suit:</b></p> <p><b>Plaintiff:</b></p> <ol style="list-style-type: none"> <li>1. Dr. Hafeezur Rahman</li> <li>2. Mr. Shafeequr Rahman</li> <li>3. Mr. Najeebur Rahman</li> <li>4. Mrs. Kamarunnisa.</li> <li>5. Mrs. Farhath Hayath.</li> <li>6. Mr. Syed Afroz</li> <li>7. Mr. Syed Sheraz</li> <li>8. Mrs. Saira Rafath</li> <li>9. Mr. Ganesh Babu K (Subsequently Impleaded 29.10.2022)</li> </ol> <p><b>Defendants:</b></p> <ol style="list-style-type: none"> <li>1. Mr. T.V. Narayanamurthy</li> <li>2. Mrs. Kusumakumari</li> <li>3. Mrs. Parijat Prakash</li> <li>4. Mrs. Ramamma</li> <li>5. Mr. Galichoudappa</li> </ol>	<p><b>Parties to the suit:</b></p> <p><b>Plaintiff:</b></p> <p>Mrs. Kusuma Kumari Represented by her GPA Holder, Mr. Sravan Chaitanya.</p> <p><b>Defendants:</b></p> <ol style="list-style-type: none"> <li>1. Mr. B.G. Chennappa (GPA holder of Mr. Hafeezur Rahman, Mr. Shafeequr Rahman and Mr. Najeebur Rahman) (GPA dated 26.10.2004).</li> <li>2. Mr. Harsha Vardhan</li> <li>3. Mr. Hafeezur Rahman</li> <li>4. Mr. Shafeequr Rahman</li> <li>5. Mr. Najeebur Rahman</li> <li>6. Mrs. Kamarunnisa.</li> <li>7. Mrs. Farhath Hayath.</li> <li>8. Mr. Syed Afroz</li> <li>9. Mr. Syed Sheraz</li> <li>10. Mrs. Saira Rafath</li> <li>11. Mr. K. Ganesh Babu (Subsequent Purchaser/Contesting Defendant) (Impleaded on 23.08.2012)</li> <li>12. Mrs. Shivamma (Subsequent Purchaser. Impleaded on 23.08.2012)</li> </ol> <p style="text-align: right;">Subsequently Impleaded 11.09.2009</p>
<p><b>Plaint Prayer:</b></p> <p>a. Declaring that the Plaintiffs are the absolute owners having lawful right, title, interest and possession over the Schedule</p>	<p><b>Plaint Prayer:</b></p> <p>a. By granting Permanent Injunction restraining the defendants, their men and people from in any way interfering with Plaintiffs peaceful possession and enjoyment of the suit</p>

<p>Property;</p> <p>b. Issue perpetual Injunction against the Defendants, restraining the Defendants, their men, agents, authorised representatives or any persons, claiming through or under them from in any way interfering with the Plaintiffs lawful and peaceful possession and enjoyment of the Schedule Property; and</p> <p>c. To grant such other order or direction, reliefs as this Hon'ble Court deems fit including costs of the proceeding, in the interest of justice and equity.</p>	<p>Schedule Property;</p> <p>a. i. Declaring the Plaintiff herein as the absolute owner in lawful possession and enjoyment of Plot No.52, Omkar Layout, situated in Sy.No.17/2A of Ganakal Village, Kengeri Hobli, Bangalore South Taluk as per the following measurements. (<i>Initially suit was filed seeking relief of Permanent Injunction and subsequent to filing of Written Statement by D1 and D2, prayer was amended seeking consequential relief of declaration on 11.09.2009</i>).</p> <p>b. Direct the Defendants to pay cost of this suit and</p> <p>c. Pass such other equitable reliefs as this Hon'ble Court may deem fit and proper in the interest of justice and equity.</p>
<p><b>Plaint Schedule Property:</b></p> <p>All that piece and parcel of Agricultural land measuring an extent of 1 Acre 05 Guntas being portion of Sy.No.3/3 later assigned with sub-division number Sy.No.3/3b as per Hissa Phodi and Akarband of survey department (wrongly incorporated as Sy. No.3/3B1 in revenue records for some years and thereafter discontinued) situated at Ganakallu Village, Kengeri Hobli, Bangalore South Taluk and bounded on the:</p> <p>East by: Naala (Halla) West by: Land Sy.No.3/3A2; North by: Halla; South by: Land in Sy.No.3/3A1</p>	<p><b>Plaint Schedule Property:</b></p> <p>Original Plaint Schedule Property: All that piece and parcel of the property bearing Site No.52, formed in Omkarnagar Layout of Sy.No.3/3B, situated as Ganakal Village, Kengeri Hobli, Bangalore South Taluk, measuring:</p> <p>East to West: <math>\frac{71'+103'}{2}</math></p> <p>North to South: <math>\frac{93'+96'}{2}</math></p> <p>Within the boundaries of:</p> <p>East by: 25 feet road, West by: 80 feet road and land of P.N.Bhat North by: Land of P.N.Bhat at present private property South by: Land of Suresh Hegde, now property No.53.</p> <p>Amended Plaint Schedule Property: (Amended on 15.07.2008)</p>

	<p>All that piece and parcel of the property bearing Site No.52, formed in Omkarnagar Layout of Sy.No.17/2A, situated as Ganakal Village, Kengeri Hobli, Bangalore South Taluk, measuring: in</p> <p>East to West: <math>\frac{71'+103'}{2}</math></p> <p>North to South: <math>\frac{93'+96'}{2}</math></p> <p>Within the boundaries of:</p> <p>East by: 25 feet road,  West by: 80 feet road and land of P.N Bhat  North by: Land of P.N Bhat at present private property  South by: Land of Suresh Hegde, now property No.53.</p>
<p><b>Issues:</b></p> <ol style="list-style-type: none"> <li>1. Whether the Plaintiffs prove that they are the absolute owners in possession of the suit Schedule Property?</li> <li>2. Whether the Plaintiffs prove the interference of the Defendants?</li> <li>3. Whether the suit is properly valued and court fee paid is sufficient?</li> <li>4. What Order or Decree?</li> </ol>	<p><b>Issues:</b></p> <ol style="list-style-type: none"> <li>1. Does the Plaintiff prove her lawful possession over the Schedule Property?</li> <li>2. Does the Plaintiff prove her interference caused by the Defendant with her possession?</li> <li>3. What Order and Decree?</li> </ol> <p>Additional Issues farmed by this Hon'ble Court:</p> <ol style="list-style-type: none"> <li>1. Whether the Plaintiff to prove that she is in absolute owner in possession of the suit Schedule Property?</li> <li>2. Whether the Plaintiff to prove the identification of the suit Schedule Property as it was formed in Omkar Nagar Layout out of Sy. No.17/2A situated at Ganakal Village, Kengeri Hobli, Bangalore South Taluk?</li> <li>3. Whether the Court Fee paid is sufficient?</li> <li>4. Whether the suit of the Plaintiff is also barred by Limitation?</li> </ol>



	5. Whether the Plaintiff is entitled for relief claimed in the suit?"
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**What emerges from the analytical excavation is that, the two suits are founded upon different topographies – figuratively and literally.**

14. What should be the ingredients of Section 10 CPC has been considered by the Apex Court in the case of **NATIONAL INSTITUTE OF MENTAL HEALTH AND NEURO SCIENCES v. C. PARAMESHWARA**<sup>1</sup>, wherein it is held as follows:

"... .."

**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

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

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."**

(Emphasis supplied)

The Apex Court notices the purport and object of Section 10 of the CPC. The High Court of Delhi in the case of **AMITA VASHISHT v. TARUN VEDI**<sup>2</sup> considers the entire spectrum of the law and holds as under:

".... ....

**22. 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.**

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

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<sup>2</sup> 2022 SCC OnLine Del 2954

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

*NIMHANS:*

"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*

"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)

**25.** 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".

**26.** "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".

**27.** This aspect stands further clarified in *Aspi Jal*. In para 9 of the report in *Aspi Jal*, 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".

**28.** Interestingly, in *Aspi Jal*, 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".

**29.** 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.

...

...

...

**32.** 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 KK 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 KK 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.

**33.** "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.* 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."

(Emphasis supplied)

The High Court of Delhi holds that 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 the same cause of action, same subject matter and same relief.

15. Long before the judgment of the High Court of Delhi, the Andhra Pradesh High Court in the case of **M. VENKATA RATNA REDDY v. V. MOHAMMED REDDY**<sup>3</sup>, has held as follows:

".... ....

**6.** Now it is necessary to examine Section 10 of C.P.C. and the relevant portion is extracted as under for ready reference:

"No Court shall proceed with the trial of any suit in which the matter in suit between the same parties, or between parties under whom they are 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:....."*

**7.** From the above section, it is clear that no court shall proceed with the subsequent suit if the following conditions are satisfied:

- (a) The issue involved in the earlier suit must be directly and substantially in issue in the later suit;
- (b) Both the suits must be between the same parties or their representatives; and

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<sup>3</sup> **2003 SCC OnLine AP 1057**



- (c) The earlier suit, which is pending must be instituted in any court having jurisdiction to grant the relief claimed.

**8. Now it is necessary to examine the facts and circumstances of the case to find out whether the three conditions stipulated under Section 10 of C.P.C. are satisfied in order to stay the present suit.**

... ..

**13.** Furthermore, the suit schedule property in both the suits is also not one and the same, and of course only one item i.e., item No. 2 of the earlier suit relating to Ac. 1.25 cents is one among three items in the plaint schedule property of the later suit.

**14.** Therefore, the rights of all the parties in both the suits are different and the subject matter of the suits is also not entirely common.

**15. Therefore, in my considered view, all the conditions prescribed under Section 10 of C.P.C. are not satisfied in order to apply the prohibition contained in the said section.**

**16.** In the decision relied on by the counsel for the plaintiff petitioner, a learned Single Judge of this Court under similar circumstances in *K. Satyanarayana v. P. Veeraju* [1996 (1) ALT 177.] relying on various judgments held at paragraph No. 7 that:

"There is no doubt that certain common issues do arise in both the suits but as already pointed out supra for Sec. 10 C.P.C. to apply, there must be identity of subject matter and mere fact that one of the questions in issue is the same as in the other suit would not make the subject matter identical. If that is so, the provisions of Section 10 CPC are not attracted to the facts of the case and the application filed by the defendants under Section 10 CPC should be held to be incompetent."

**17. Coming to the case on hand, as already pointed out, the subject in issue in both the suits is identical only with regard to one item of the properties mentioned in**

**the schedules in both the suits. All the issues and parties in both the suits are also not common. That apart, the relief sought in both the suits is also different. As already pointed out, which is the substantial question and which is the incidental question in both the suits, with regard to title or possession is not yet decided and both the suits are pending at different stages.**

**18. Further significant factor to be noted is that, the defendants allowed the trial of the later suit to go on, and only at the stage of arguments, the present application is filed. In my considered view, this application is definitely at the belated stage. It is also to be noted that, when the defendants have the knowledge that the issues in the earlier suit and the later suit are common in all fours, proper application under Section 10 of C.P.C. could and should have been made at the threshold.**

**19. Apart from the above legal position, as already pointed out, the conduct of the defendants in filing the present I.A. at the fag end of the trial cannot be appreciated."**

(Emphasis supplied)

The precedential compass as held by the Apex Court and the judgments of High Courts of Andhra Pradesh and Delhi as noted *supra*, leads to an unmistakable inference that an application under Section 10 of the CPC can be considered, if three cumulative conditions are met – **(1) the issues in both the suits must be directly and substantially the same; (2) the parties must be the same or litigating under the same title; and (3) the earlier suit must be in a competent Court.** The case at hand

nowhere meets the ingredients of Section 10, which would be identity identical to cause, parties and subject.

16. In view of invoking the jurisdiction of this Court on the aforesaid plea, without divulging the proceedings instituted by the petitioner before concerned Courts, all of which are narrated hereinabove, the petition deserves to be dismissed, **as the petitioner having remained quiescent for 18 years and having allowed the trial to mature to its final phase, cannot now seek refuge, that the law does not extend.** The dismissal cannot be without mulcting the petitioner with exemplary costs of ₹50,000/- to be payable by the petitioner, to the respondents/plaintiffs.

17. For the aforesaid reasons, the following:

ORDER

- (i) The Writ Petition is **dismissed** with cost of ₹50,000/- to be paid by the petitioner, to the respondents/plaintiffs.

- (ii) The order impugned of the concerned Court dated 12-09-2024 stands upheld.
- (iii) In the light of the suit being of the year 2006 and the fact that it is languishing in its 19<sup>th</sup> year, I deem it appropriate to infuse finality.
- (iv) The concerned Court shall conclude O.S.No.9897 of 2006 within an outer limit of two months from the date of receipt of a copy of this order.

Ordered accordingly.

Consequently, I.A.No.1 of 2025 also stands disposed.

**Sd/-**  
**(M.NAGAPRASANNA)**  
**JUDGE**

bkp  
CT:MJ