

Padmavati Tradelink Ltd vs Standard Chartered Bank And Ors on 9 October, 2026

Author: [Aniruddha Roy](#)

Bench: [Aniruddha Roy](#)

Form J(2)

Sl.No. 01

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present:

The Hon'ble Justice Aniruddha Roy

IA No. GA-COM/9/2025
[Old No. CS/159/2021]
In CS-COM/297/2024
PADMAVATI TRADELINK LTD.
VS
STANDARD CHARTERED BANK AND ORS
AND
IA No. GA-COM/11/2026
[Old No. CS/159/2021]
In CS-COM/297/2024
PADMAVATI TRADELINK LTD.
VS
STANDARD CHARTERED BANK AND ORS

For plaintiff:

Mr. Tilak Kumar Bose, Sr. Adv.
Ms. Suchismita Ghosh, Adv.

Mr. Pradip Kumar Sarawagi, Adv.

For defendant no.1/
Standard Chartered Bank

Ms. Arti Bhattacharyya, Adv.

For defendant no.2

Ms. Ajeyaa Choudhury, Adv.
Mr. Anirban Ghosh, Adv.

For defendant nos.3

Mr. Rohit Banerjee, Adv.

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Mr. S.S. Bhutoria, Adv.

For defendant no.4

Mr. Altamash Alim, Adv.

Mr. S.S. Bhutoria, Adv.

For defendant no.8

Mr. S. Pal Choudhuri, Adv.

Ms. Sanchita Dey Pal Choudhuri, Adv.

For defendant no.9

Mr. Uttam Kumar Mandal, Adv.

Mrs. Maitree Roy, Adv.

Ms. Uditā Mandal, Adv.

Reserved on : 01.09.2026

Judgment on : 09.10.2026

ANIRUDDHA ROY, J.:

Facts:

1. CS-COM/297/2024 [OLD No. CS/159/2021] (hereinafter, the instant suit) had been filed by the owner of the property. IA No. GA-

COM/9/2025 (hereinafter, the first application) has been filed by defendant no.4. IA No. GA-COM/11/2026 (hereinafter, the second application) has been filed by defendant

no.3.

2. Both the said applications filed by the two applicants have been filed under [Section 10](#) of the Code of Civil Procedure (hereinafter, the Code) praying for stay of the instant suit.

3. Since both the applications arose out of the same suit with an identical prayer relating to the self-same property and involving common questions of law, by consent of parties, both the applications have been IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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taken up for consideration together and through the present composite judgment, the said two applications are finally decided.

4. The inescapable facts are only stated.

5. The plaint case, in brief, is narrated hereinafter :

5.1. Defendant no.1 (Standard Chartered Bank) (herein, the bank) was the original owner of premises no.19, Netaji Subhas Road, P.S. Hare Street, Kolkata - 700001 (herein, the property) having a land area of about 51.638 Cottahs more or less and building standing thereupon, comprising of basement, ground, mezzanine, first, second and third floor and a roof, having a total built up area of about 11,891.57 sq. mtr., equivalent to 1,28,000.59 sq. ft. The entirety of the said property was in occupation of the bank save and except the second floor which was in occupation of various tenants against whom several eviction proceedings were and still are pending. The bank at all material times was in exclusive possession and occupation of entirety of basement, ground and mezzanine, first floor and third floor including roof and all common areas at the property.

5.2. Third floor of the premises has covered area or built up area of about 16389 sq. ft.. The rest of the third floor measuring about 14,166 sq. ft. comprised of terrace is open to sky (hereinafter, the open area). The said open area comprised of a terrace and an open cut out area at the centre and iron stairs leading to the roof whereat the water tanks of the bank were and still are located.

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The area of the roof is equivalent to built-up area of the third floor which is 16389 sq. ft. Towards the south of the third floor, three dish antennas which are used by the bank are located. Towards north-east corner of the third floor, there is a chiller plant guarded by net wire fencing all round and an iron gate entrance to the plant. The chiller plant is being used by the bank for running its air conditioning system. The water tanks, disc antennas, chiller plant and control room at all material times are being used by the bank for its exclusive use. The staircase leading to the roof is situated opposite to the chiller plant and serves the only access to the roof. The control room for the chiller plant is

located at one end of the built in structure in the third floor and opposite to the chiller plant.

5.3. Bank has been carrying on banking business from the property since about 1958.

5.4. By a registered deed of conveyance dated June 8, 2017 the plaintiff purchased from the bank, inter alia, all that comprising basement (4517 sq. ft.) ground floor (29387 sq. ft.), mezzanine floor (18934 sq. ft.), first floor (29387 sq. ft.), second floor (29386 sq. ft.) and partly third floor (16389 sq. ft.) having an aggregate area of 128000.859 sq. ft. together with portion of open terrace along with all piece and parcel of land on which the property is built up comprising of an area of land about 51.638 cottahs.

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5.5. Under a registered deed of lease dated June 8, 2017 executed and entered into by and between the plaintiff and the bank, the plaintiff permitted the bank to continue to use, occupy and enjoy the basement having super built-up area of 4517 sq. ft., ground floor having a super built-up area of 29387 sq. ft., mezzanine floor having a super built-up area of 18934 sq. ft. and the first floor having a super built-up area of 29387 sq. ft., aggregating to 82,225 sq. ft. super built-up area together with four car parking spaces as described in the said lease deed at a rental mentioned therein.

5.6. Defendant nos.5 and 6 are subsidiaries of the bank/defendant no.1. By virtue of three registered lease deeds dated January 5, 2021, December 7, 2020 and August 13, 2021, the defendant nos.1, 5 and 6 as lessees of the plaintiff were made liable to pay various payments concerning the properties as aggregating thereunder.

5.7. The plaintiff is in use and occupation of portions of the third floor, roof above the terrace and also common areas including lift and staircase of the property. Plaintiff remains the registered owner of and in respect of the entire second floor of the property, though the same is occupied by several unauthorized tenants of the bank.

5.8. On February 6, 2018 and March 09, 2018 portions of third floor of the property comprising a built-up area for about 16389 IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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sq. ft. was sold and conveyed by the plaintiff in favour of defendant no.2 in LOT-A and LOT-B under two separate deeds of conveyance marked as Annexures F and G to the plaint. The defendant no.2 was put in possession in respect of both the said LOT-A and LOT-B at the third floor of the property. 5.9. Defendant no.2 thereafter started creating obstruction towards the plaintiff to have its access to the various portions of the property which were not conveyed to the defendant no.2 and the plaintiff still is the owner thereof.

5.10. By reasons of the said obstruction caused by the defendant no.2, the plaintiff had filed a civil suit on or about October 13, 2020 (hereinafter, Previous Suit) being CS-COM

206 of 2024 (previously CS No.121 of 2020)} against the defendant nos.1 and 2 after obtaining leave under Order II Rule 2 of the Code and prayed for following reliefs :

"a) Declaration that the Plaintiff is the absolute owner of the open terrace in the third floor measuring about 14166 square feet and the roof above the built up area of the third floor measuring 16389 square feet and all structures lying there at in respect of premises 19, Netaji Subhas Road, Kolkata 700 001 as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto.

b) Declaration that the Plaintiff, its servants, representatives, assigns and lessees have right of free ingress and egress to and use, operation and maintenance of the control room for the chiller plant located at the third floor of premises 19, Netaji Subhas Road, Kolkata 700 001 as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto;

c) Declaration that the plaintiff, its servants, representatives, assigns and lessees have right of IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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ingress and egress to all installations at the terrace in the third floor including the Chiller Plant, satellite dish antenna and water storage tanks located in the roof above the built up structures in Third floor of premises No 19, Netaji Subhas Road, Kolkata 700 001 and are entitled to use, utilise and enjoy the same as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto;

d) Declaration that the ownership of the defendant no.1 in the third floor is restricted to Lot "A" measuring only divided and demarcated built up portion of the third floor containing an area of 12,292 sq. ft. as mentioned in the deed of conveyance dated 6th February, 2018 and Lot "B" built up area of 4097 square feet as mentioned in the deed of conveyance dated 9th March, 2018;

e) Declaration that the plaintiff, its servants, representatives, assigns and lessees have easementary right over the control room for chiller plant /AC plant located in the third floor and/or right to use the same as common area as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto;

f) Declaration that the phrase "land appertaining" to Lot "A" and "B" stated in the deeds of conveyance dated 6th February, 2018 and 9th March, 2018 is incapable of conveying or transferring any absolute right, title or interest therein in favour of the defendant no.1 in any manner whatsoever in respect of open terrace measuring 14166 square feet at the third floor and 16389 square feet of roof area above the built up area in the third floor as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto and/or otherwise;

g) Declaration that the phrase "land appertaining" to Lot "A" and "B" as purportedly mentioned in the deeds or which may be allegedly shown in the maps appended in the deed of conveyance dated 6th February, 2018 and 9th March, 2018 in orange and yellow colours respectively is vague, uncertain, devoid of particulars and void and the same be directed to be delivered up and cancelled;

h) If necessary, the entire conveyance deeds dated 6th February 2018 and 9th March 2018 be declared null and void and the same be delivered up and cancelled;

i) A decree of perpetual injunction restraining the defendant no.1, its men, agents, servants, assigns IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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and/or anyone claiming on their behalf from preventing and/or obstructing the plaintiff its servants, representatives, assigns and lessees free ingress and egress to the open terrace and all installations and equipment there at including the Chiller Plant Room and satellite antenna situated on Third floor of the said building and the common areas, facilities, amenities open spaces and allied easementary rights on the third floor and use and maintenance of the same as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto;

j) A decree of perpetual injunction in relation to restraining the defendant no.1, its men, agents, servants, assigns and/or anyone claiming on their behalf from interfering with or obstructing the plaintiff, its servants, representatives, assigns and lessees free access, using and utilisation of the roof above the built up area of the third floor and all installations threat and in particular the water storage tanks and all other common areas, facilities, amenities open spaces and allied easementary rights of the said building in any manner whatsoever as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto;

k) A decree of perpetual injunction in relation to restraining the defendant no.1, its men, agents, servants, assigns and/or anyone claiming on their behalf from interfering with the rights of the plaintiff and/or the lessees and/or tenants under the plaintiff from accessing, visiting and maintaining the Chiller Plant, C(Band) satellite dish antenna and the water storage tank situated in the roof of the said building and/or common portions thereof in any manner whatsoever as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z- 4" hereto;

l) A decree of perpetual injunction in relation to restraining the defendant no.1, its men, agents, servants, assigns and/or anyone claiming on their behalf from obstructing and denying the Plaintiff, its servants, representatives, assigns and lessees the right of access, use, maintenance of the control room to the chiller plant /AC plant at the third floor of the premises as shown in the layout plan being Annexure 'A' hereto and schedule being Annexure "Z-4" hereto;

m) Decree of perpetual injunction restraining the defendant no.1 from putting any padlock in the IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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collapsible gate at the entrance of the control room of the Chiller Plant/AC plant in the third floor of the premises;

n) If, necessary decree of mandatory injunction directing the defendant No.1 to remove and dismantle the collapsible gate at the entrance door to the control room for the chiller plant/AC plant.

o) An enquiry into the loss and damage already suffered by the plaintiffs for the wrongful and illegal acts committed by the defendant no. 1 and a decree for such sums be paid to the plaintiff upon such enquiry being made;

p) Injunction;

q) Receiver;

r) Attachment;

s) Costs;

t) Further or other relief;"

5.11. Defendant no.1/bank herein was impleaded as the pro-

forma defendant no.2 therein in the previous suit. The defendant no.2 herein was impleaded as the defendant no.1 in the previous suit. The said previous suit is still pending. The defendant no.2 herein had entered appearance and filed written statement in the said previous suit.

5.12. The defendant no.2 herein, however, in breach of its obligation owed to the plaintiff and in violation of the covenant contained in the said two deeds of conveyance under which defendant no.2 had obtained right in the property, had purported to sale, alienate and transfer portions of the property covered under the said two deeds of conveyance executed by the plaintiff in favour of the defendant no.2 herein to the defendant nos. 3 and 4. Challenging the said purported transfer, inter alia, in IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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favour of defendant nos.3 and 4, the plaintiff had filed the instant second suit (hereinafter, second suit) with the following reliefs :

"(a) Delivery up and cancellation of the two Deeds of Conveyances dated 21st May, 2018 and 15th October, 2018 being Annexure 'J' and 'K' hereto executed by defendant no. 2 in favour of defendant nos. 3 and 4, and the same be adjudged as null and void and inoperative;

- (b) the area covered by the aforesaid Deeds of Conveyance dated 21st May, 2018, and 15th, October, 2018, from the Defendant No's. 3 and 4 to the Recovery of possession of Plaintiff;
- (c) A further decree of perpetual injunction restraining the defendant nos. 3 and 4, and their officers, managers, men, servants and agents, and/or anyone claiming from and/or on their behalf from making any transfer and/or further transfer of the portions mentioned in Schedule being Annexure 'H' and I' hereof in any manner whatsoever.
- (d) A further decree restraining the defendant permanently from No.2 selling, alienating and transferring and/or otherwise dealing with any part or portion of the areas covered by the Deeds of Conveyance dated 6th February, 2018 and 9th March, 2018 till such time amount of Rs.2,47,50,000/- is paid by the defendant No.2 to plaintiff.
- (e) Decree for Rs.1,87,717/- as claimed in paragraph 48 above as against defendant No.2;
- (f) Decree of mandatory injunction directing the Defendant No.2, to pay further and future proportionate maintenance and insurance charges for the common area and portions of the third floor of the said premises;
- (g) Decree of mandatory injunction directing the Defendant No. 2 to make payment of its proportionate share of municipal taxes for portions of the third floor of the premises on the basis of actual assessment;
- (g) (i) Mandatory injunction directing defendant Nos. 1, 5 and 6 to pay proportionate maintenance charges on and from the effective dates mentioned in their respective registered Deed of Lease.
- (h) Alternatively, a fit and proper person/agency appointed for the purpose of maintenance of the common areas of the building including its IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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installation and costs and expenses of such maintenance agency be borne by the plaintiff No.1 and the defendant No.2 in equal share;

- (i) Decree of perpetual injunction, restraining the Defendant No. 1, and its officers, managers, men, servants and agents, and/or anyone claiming from and/or on behalf of the Defendant No.1 from deducting or withholding any amount from the monthly lease rentals, due and payable from the Defendant No.1 to the Plaintiff, on account of non-payment of electricity charges by Defendant No. 2 to Defendant No. 1 or electricity dues and consumption of defendant Nos. 2 to 4 or defendant Nos. 8 to 11.
- (j) Decree of perpetual injunction restraining the Defendant No. 1 and its officers, managers, men, servants and agents, and/or anyone claiming from and/or on behalf of

the Defendant No. 1 from acting contrary to and in breach of the registered Lease Deed entered into between the Plaintiff and the Defendant No. 1, dated 5th January, 2021, in any manner whatsoever;

(k) Perpetual injunction restraining the defendant No.1, its and agents servants, assigns from deducting any sum on account of electricity bill or consumption by the defendant Nos.2, 3 and 4 from payable by rent defendant No.1 to the plaintiff;

(l) If necessary, the defendant No.7 be directed to install separate meter in the name of the plaintiff for use of the common areas and portions of the building in the possession and occupation of the plaintiff;

(m) Decree of Rs.27,15,842/-as pleaded in paragraph 41 as against defendant No.1;

(n) Interest at the rate of 18% per annum on Rs.27,15,842/-;

(o) Delivery up and cancellation of the two Deeds of Conveyance dated 6th February, 2018 and 9th March, 2018 and the same be adjudged as null and void and inoperative;

(p) Decree for recovery of vacant, peaceful and khas possession of the entirety of the portion of the third floor and terrace of the said premises as mentioned in LOT A and LOT B Deeds of the two Conveyance, dated of 6th February, 2018 and 9th March, 2018, from the Defendant No.2, to the Plaintiff;

(q) In the alternative,

i) Decree of Rs.2,47,50,000/-as pleaded in paragraph 24, as against Defendant No. 2; the IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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ii) Interest at the rate of 18% per annum on the outstanding principal sum of Rs.2,47,50,000/- on and from 1st May, 2018;

(r) Receiver;

(s) Injunction;

(t) Costs of legal proceedings;

(u) Further or other relief;"

6. In the above facts and circumstances the defendant no.4 has filed the said First Application praying for stay of the second suit in view of the pendency of the said previous suit along with other consequential reliefs.

7. Similarly, the defendant no.3 has also filed the said Second Application with an identical prayer for stay of the second suit.

8. Parties have filed and exchanged their respective affidavits. Parties have also filed their written notes.

Submissions :

9. Mr. Altamash Alim learned Advocate appearing for the defendant no.4/applicant at the outset has placed both the complaints and the reliefs claimed thereunder extensively. He submits that the matter in issue in the second suit, which is the subsequent suit, is directly and substantially in issue in the said previous suit. He submits that the defendant no.4 claims litigating under the same title which is pending adjudication in the previous suit.

10. Mr. Altamash Alim learned Advocate appearing for the defendant no.4/applicant submits that the defendant no.2 had purchased portion of the Third Floor, inter alia, LOT-A and the property appertaining thereto from the plaintiff on February 6, 2018 and March 9, 2018. The IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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defendant no.4 had purchased a portion of LOT-A from the defendant no.2 on October 15, 2018 by way of registered conveyance upon making payment of the consideration mentioned therein. The agreement dated February 06, 2018 is the deed based on which defendant no.4 has purchased a portion from the defendant no.2 which is recorded in the deed dated October 15, 2018. If the deed dated February 06, 2018 executed by the plaintiff in favour of the defendant no.2, does not exist then consequentially the deed of conveyance dated October 15, 2018 executed by the defendant no.2 in favour of the defendant no.4 shall not exist and the defendant no.4 in effect would lose its valuable right, title and interest over the property.

11. Referring to the said three deeds of conveyance, two being executed in favour of the defendant no.2 by the plaintiff and the one being executed in favour of the defendant no.4 by the defendant no.2, Mr. Altamash Alim submits that the defendant no.4 has assumed and acquired a valid right and title from defendant no.2 which in turn assumed the title from the plaintiff flowed in favour of defendant no.4. He further submits that there are several disputes and differences about LOT-A on account of the interpretation of conveyance dated February 6, 2018 and the alleged claim on account of unpaid money, which resulted the plaintiff to file the previous suit against the defendant no.2 and the defendant no.1 herein.

12. With specific reference to the reliefs claimed by the plaintiff in the previous suit, learned Advocate for the defendant no.4 submits that the IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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plaintiff had claimed delivery up and cancellation of the deeds of conveyance dated February 6, 2018 and March 9, 2018 executed by the plaintiff in favour of the defendant no.2. He specifically refers to prayer

(h) from the previous plaint.

13. Mr. Altamash Alim, learned Advocate then submits that if the said prayer (h) in the previous suit is allowed, automatically the conveyance executed by the defendant no.2 in

favour of the defendant no.4 would be of no effect or further effect and would be rendered void. The plaintiff ought to have filed a comprehensive suit, if at all and not the two separate suits in their present form where the issue in the second suit is identically same and/or substantially same with that of the previous suit.

14. Learned Advocate for the defendant no.4 then refers to prayers from the second suit where the plaintiff has made a monetary claim coupled with cancellation of the conveyance dated October 21, 2018 and February 06, 2018 along with other prayers. Learned Advocate then refers to prayers (a), (b), (o) and (p) from the second suit.

15. Learned Advocate for the defendant no.4 has then referred to [Section 10](#) of the Code and submits that the provisions laid down thereunder is not restricted only between/amongst the same parties in two suits, rather it is extended to any and every person who claims litigating under the same title. He submits that the expression "same party" is not at all a consideration while dealing with a [Section 10](#) application as plaintiff may choose to add several parties to mislead the Court and IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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imply clever drafting to avoid rigour of [Section 10](#) of the Code. In support, he has placed reliance on a decision In the matter of : AIR 2006 Cal 2972.

16. Learned Advocate for the defendant no.4 submits that his client has obtained the property from the defendant no.2 under a registered conveyance dated October 15, 2018 who in turn had obtained title from the plaintiff under the registered conveyance dated February 6, 2018 and the title has successfully passed upon the defendant no.4. Defendant no.4 purchased well within the caveat prescribed under [Section 10](#) of the Code and as such there is no such impediment upon the defendant no.4 in maintaining the [Section 10](#) application.

17. Mr. Altamash Alim, learned Advocate appearing for defendant no.4 further submits that the issue of a non-party to the previous suit can maintain an application under [Section 10](#) of the Code is no more res integra. Reliance has been placed on the following decisions :-

(a) In the matter of: [Challapalli Sugar Ltd. vs. Swadeshi Sugar Supply Pvt. Ltd.](#) reported at AIR 1983 Cal 199;

(b) In the matter of: The Laxmi Bank Ltd. Aloka and Others vs. Harikisan and Ors. reported at AIR 1948 Nag 297;

(c) In the matter of: [Shorab Merwanji and Anr. vs. Mansata Film Distributors and Anr.](#), reported at AIR 1957 Cal 727.

18. On the expression "same parties" learned Advocate Mr. Altamash Alim submits that it would mean the parties between whom the matter substantially in issue has arisen and has been decided. The complete IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

identity either of the subject-matter or the parties are not required. The purport and intent behind the two suits are to be looked into. For the purpose of [Section 10](#) application there may not be a complete identity of party or complete identity of the subject-matter. Such a situation would promote an unscrupulous or dishonest litigant like the plaintiff herein to avoid the provisions under [Section 10](#) of the Code and to permit to file consecutive suits which may be with identical issues. Thus, there is no bar in law for non-party to maintain a [Section 10](#) application and pray for stay of the subsequent suit.

19. The expression "same title" used in [Section 10](#) of the Code would mean that the liability for one to file an application is when the dispute of the entire area and not a portion of it. The defendant no.2 had purchased LOT-A on the Third Floor from the plaintiff. Defendant no.4 had purchased a portion from the defendant no.2, however, that does not make any difference because common areas are part of the ownership of defendant no.2 which is also a subject-matter in the second suit. Defendant no.4 assumes and derives title from the chain of title flowing down from the plaintiff to the defendant no.4. The phrase same title used in [Section 10](#) of the Code does not make a distinction which the plaintiff had asserted. It is settled that even a portion of land would construe and/or come within the phrase same title. Reliance has been placed in a decision In the matter of: [Abdul Gani and Anr. vs. Nabendra Kishore Roy & Ors.](#), reported at 33 CWN Cal 876.

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20. Learned Advocate further submits that in a case where whole title is in issue in a previous suit, the same cannot be agitated in a subsequent suit. Applying the same principle, the phrase same title cannot be allowed to be given a restrictive interpretation rather the same should be considered in the light of the entire section. As such, even a portion of the title would construct same title, entitling the defendant no.4, in the facts of this case, to maintain the [Section 10](#) application.

21. Mr. Altamash Alim further submits that the plaintiff before filing the instant suit had duly cancelled the conveyance dated February 06, 2018 by way of a letter. The plaintiff had also asked for possession of the premises from the defendant no.2 since the relevant conveyance stand cancelled by the defendant no.2. As per the plaintiff, the previous suit has been primarily filed seeking declaration that the area of the defendant no.2, which in turn includes the area of the defendant no.4 is restricted to LOT-A and does not include the open space including chiller plant and others are not the common subject-matter in both the suits. The plaintiff has sought for correction in the conveyance and prayed for prayer (h), as quoted above, in the previous suit, which has already been obtained by the plaintiff would it had cancelled the conveyance dated February 6, 2018. The natural outcome of the prayer is recovery of possession by the plaintiff which would include the

possession of the defendant no.4. The plaintiff had not necessitated to make the prayer in the previous suit had it its prayers been restricted to declaration of area as has been submitted by the plaintiff before this IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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Court. Till date, the plaintiff has not given up prayer (h) in the previous suit. In the second suit being the instant suit, the plaintiff has also asked for delivery up and cancellation of the same deeds as sought for in the previous suit. In case, the trial of the instant suit is allowed to be proceeded then there will be an anomalous situation which would lead to absurdity and multiplicity of judicial pronouncement.

22. Mr. Altamash Alim submits that in case the previous suit is allowed to be proceeded with and prayer (h) is granted, then prayers in the second suit will automatically be granted and it would have an effect of res judicata in the second suit. In the event prayer (h) in the previous suit is allowed, prayers (o) and (p) are not allowed in the second suit then the situation will be so absurd that it will give birth to a complicated situation. The plaintiff would claim res judicata in view of grant of prayer (h) in the previous suit so far as the second suit is concerned.

23. Referring to prayer (h) from the previous suit, learned Advocate for the defendant no.4 submits that if the said prayer is allowed it would operate as res judicata in the instant second suit and therefore, the issue in the instant second suit would be directly and substantially be same with that of the previous suit. Prayer h in the previous suit if is allowed, would automatically non-suit the defendant no.4 in the instant suit. In the light of the above, defendant no.4 submits that the instant [Section 10](#) application should be allowed.

24. Mr. Rohit Banerjee, learned Advocate appearing for the defendant no.3 being the applicant in the second application has submitted that the IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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defendant no.3 is identically situated and similarly placed with the defendant no.4. Mr. Banerjee has adopted the entire submissions made on behalf of the defendant no.4.

25. He has also prayed for identical relief in his application and prays for stay of the instant suit.

26. Mr. Tilak Kumar Bose, learned Senior Advocate appearing for the plaintiff, at the outset, has referred to both the complaints, the averments and reliefs made therein. He submits that in the previous suit admittedly, defendant no.4 is not a party. It is a suit filed by the plaintiff against the defendant nos. 1 and 2 herein. Subject-matter of the previous suit relates to built up area measuring 16389 sq. ft. on the Third Floor of the property which was sold and conveyed in two lots - LOT-A and LOT-B under two separate deeds of conveyance dated February 6, 2018 and March 9, 2018. Under the said conveyance dated February 6, 2018 LOT-A comprised an area of 12292 sq. ft. more less

super built-up which forms the covered area of a portion of Third Floor of the property. Under the deed of conveyance dated March 9, 2018, LOT-B comprising an area of 4097 sq. ft. more or less super built-up which forms the covered area of a portion of Third Floor of the property.

27. Learned Senior Advocate, Mr. Tilak Kumar Bose submits the specific case of the plaintiff in the previous suit against the defendant no.2 is that the open terrace and roof on the Third Floor of the property, were never conveyed to defendant no.2. The plaintiff has only sold and transferred built-up area on the Third Floor of the property to IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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defendant no.2 concluding the open area, where Air Conditioning chiller plant, satellite disc-antenna and other equipment are installed. In this fact situation, the previous suit had been filed with the leave under Order II Rule 2 of Code. The reliefs are restricted to the open terrace and roof on the Third Floor of the property. He submits that prayer (h) in the previous suit is an incidental relief which is depends on other reliefs. The issues framed in the previous suit by an order dated June 19, 2023 by the Coordinate Bench, would clearly show that the issues in the second suit are not identical or same with that of the previous suit.

28. Mr. Tilak Kumar Bose, learned Senior Advocate appearing for the plaintiff then submits, on a comparative reading of the issues in the two suits would show that by nature and character they are totally different. Defendant no.2 is a party in both the suits and has filed its written statement. Defendant no.2 has not filed any application for stay of the trial in the second suit. He submits that defendant nos.3 and 4 who are not the parties in the previous suit but the parties in the second suit had chosen to file their respective application under [Section 10](#) of the Code without filing their written statements. Both the defendant nos.3 and 4 seek to claim right under the defendant no.2, have consciously chosen not to file written statement but to file [Section 10](#) applications.

29. Mr. Tilak Kumar Bose, learned Senior Advocate appearing for the plaintiff then has referred to the third conveyance, as [referred to above](#) and submits that prima facie it is evident that the defendant nos.3 and IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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4 must have noticed the parent deed of conveyance dated February 6, 2018 under which, LOT-A -Third Floor covered built up area measuring about 12292 sq. ft. was sold and conveyed by the plaintiff to the defendant no.2, at the time of execution of the conveyance with the defendant no.2 dated October 15, 2018. He has referred, inter alia, clauses 18, 19 and 20 from the conveyance deed dated October 15, 2018 at pages 354 to 355 of the plaint - volume III. Thus, defendant no.4 is bound by the covenant mentioned in the deed under which it is claiming title.

30. Mr. Tilak Kumar Bose, further submits that defendant no.4 has allegedly purchased 425.18 sq. ft. super built up area on the Third Floor of the property, which is a miniscule portion of the covered constructed area under LOT-A as would be evident from the schedule at page 367 of the plaint being part of the conveyance dated October 15, 2018. He further submits that the defendant no.4 is not connected or claiming to have any interest with regard to the open area covering the roof and terrace on the Third Floor which is the issue involved in the previous suit.

31. Referring to [Section 10](#) of the Code, Mr. Tilak Kumar Bose learned Senior Advocate submits that four tests are required to be satisfied to apply the said provision, which are, inter alia :-

(i) Identical issues involved in previous suit as well as in the second suit;

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(ii) No relief or cause of action but the issues involving in both the suits are to be looked into while deciding an application filed under [Section 10](#);

(iii) Both the suits must be between the same parties for principle akin to res judicata to apply and ;

(iv) The issues in two suits must be identical or atleast substantially similar.

32. Mr. Tilak Kumar Bose, learned Senior Advocate for the plaintiff then submits the foundation of [Section 10](#) is that no person should be vexed towards for the same issue which is akin to the principle of res judicata. The defendant no.4 or 3 has no locus to maintain the said first application since, they are not parties in the previous suit and also such application is not maintainable under [Section 10](#) when the same party, namely, defendant no.2 is impleaded in the second suit and has filed its written statement and consciously chosen not to file an application praying for stay of the second suit. In support, Mr. Bose has cited few decisions which are reproduced herein with their respective proposition :-

(i) Issues must be identical :

(a) In the matter of: [Bepin Behary Mozumdar and others vs. Jogendra Chandra Ghosh and Another](#) reported at AIR 1917 Cal 248;

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(b) In the matter of: [Aspi Jal and Another vs. Khushroo Rustom Dadyburjor](#) reported at (2013) 4 SCC 333;

(c) In the matter of: [Shaw Wallace & Co. Ltd., vs. Bholanath Mandanlal Sherawala and Others](#) reported at 1975 Cal 411.

(ii) Does not relate to relief or cause of action but issues :

(a) In the matter of: [Adhish Chandra Sinha vs. Hindusthan Gas & Industries Ltd. and Another](#) reported at AIR 1985 Cal 154.

(iii) Between the same parties :

(a) In the matter of: [Sivaprasad Ram vs. Tricomdas Coverji Bhoja](#) reported at (1915) ILR (XLII) 926;

(b) In the matter of: [Mahadevappa vs. Dharmappa Sanna and Another](#) reported at (1942) ILR Bom 798.

(iv) Akin to Res Judicata :

(a) In the matter of: [Shaw Wallace & Co. Ltd., vs. Bholanath Mandanlal Sherawala and Others](#) reported at AIR 1975 Cal 411.

33. While dealing with the judgments relied upon by the defendant no.4, In the matter of: [Shorab Merwanji and Anr.](#), (Supra) Mr. Tilak Kumar Bose, learned Senior Advocate for the plaintiff submits that the said suit was between the same parties and issues were same. Existence of IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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additional parties did not make any difference, as additional party did not apply under [Section 10](#) of the Code.

34. While dealing with the judgment In the matter of: [Challapalli Sugar Ltd.](#), (Supra) Mr. Tilak Kumar Bose submits that parties in the Andhra Suit and Calcutta Suit were common. The same goods were involved. No additional party was involved. Hence, the suit was stayed. It was held that subject-matter of controversy was the same which arose from the same contract and same transaction. The issue involved whether property had passed or not was the common issue in both the suits.

35. While dealing with the judgment In the matter of: [Abdul Gani and Anr.](#) (Supra) Mr. Tilak Kumar Bose, learned Senior Advocate submits that it was a case on the principle of res judicata under [Section 11](#) of the Code. The expression "litigating under same title" will come into operation only when a third party who was not a party in the first suit is a party in the second suit and the original party is not impleaded in the second suit.

36. While concluding his submission, Mr. Tilak Kumar Bose, learned Senior Advocate submits that the issue pertaining to conditional conveyances, charge, under [Section 55 \(4\)\(b\)](#) of Transfer of Property Act, 1882 has been created in favour of the plaintiff, since the defendant no.2 has not paid the consideration in full as agreed. Hence, the plaintiff is entitled to delivery up and cancellation of the conditional conveyances executed by it in favour of the defendant no.2.

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37. In reply, Mr. Altamash Alim learned Advocate appearing for the defendant no.4/applicant has specifically submitted that even though defendant no.4 or 3 were not parties in the previous suit, since defendant no.4 and 3 have received their right and title from defendant no.2 who is a party in the first suit, the defendant no.4 has been after being impleaded in the second suit is litigating under the same title. Therefore, if the right, title and interest of the defendant no.2 in the first suit, is declared to be void, it will automatically and in effect would affect the right, title and interest of the defendant no.4. Decision :

38. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, admittedly, the defendant no.4/applicant or the defendant no.3/applicant are not impleaded in the previous suit. The previous suit had been instituted by the plaintiff against the defendant nos.1 and 2 herein only.

39. To ascertain the scope and construction of the relevant provisions for staying the subsequent suit, [Section 10](#) of the Code is quoted below: -

"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]."

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40. On a meaningful and harmonious reading of the provisions laid down under [Section 10](#) of the Code, this Court finds that the essential tests for stay of the subsequent suit are :

- (i) The matter in issue in the second suit is directly and substantially in issue in the previous suit;
- (ii) Both the previous suit and the subsequent suit shall have to be between the same parties;
- (iii) In the event and in the alternative, if the parties to the subsequent suit are not same with that of the previous suit, then a party who claims for stay of trial of the subsequent suit must be one who claims to be litigating under the same title with that of the previous suit.

41. The object underlying [Section 10](#) of the Code is to avoid two parallel trials on the same issue of two Courts of concurrent jurisdiction or in two distinct separate suits even

before the same Court and to avoid recording of conflicting findings on the issues which are directly or substantially in issue in a previously instituted suit. Mere filing of an application under [Section 10](#) does not in any manner cause an impediment or put an embargo on the power of the Court to examine the merits of the matter. For application of the provisions under [Section 10](#) of the Code, it is essential that the Court in which previous suit is pending is competent to grant relief claimed. The use of the negative expression at the inception of [Section 10](#) that no Court shall proceed IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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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 subsequent suit, if the conditions laid down under [Section 10](#) of the Code are satisfied. The key expression in [Section 10](#), the matter in issue is directly and substantially in issue in the previously instituted suit is to be seen in the light of the tests 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.

42. The second important test is whether parties to both the suits are same and even if not same whether a party in the second suit is litigating under the same title in the first suit, parties are litigating. This is to pin down the plaintiff to one litigation so as to avoid the possibility of conflict of judicial pronouncement by two Courts in respect of the same or substantially same issue and to protect the defendant from multiplicity of judicial proceeding.

43. On a close scrutiny of both the complaints and the reliefs claimed therein, in the facts of this case, it appears to this Court that the subject-matter of the previous suit is the built-up area measuring about 16389 sq. ft. on the Third Floor of the property which was sold and conveyed in two Lots - LOT-A and LOT-B under two separate deeds of conveyance dated February 06, 2018 and March 09, 2018 by the plaintiff in favour of the defendant no.2.

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44. The subsequent complaint case in the previous suit filed by the plaintiff against the defendant no.2 is that the open terrace and roof on the Third Floor of the said property, which were never conveyed to defendant no.2 The plaintiff had only sold, transferred and conveyed the built-up area of Third Floor of the property to defendant no.2 excluding the open area. The plaintiff has further contended that the defendant no.2 has not paid the entire purchase price to the plaintiff, hence, by operation of [Section 55\(4\)\(b\)](#) of the Transfer of Property Act, 1882, the absolute right, title and interest had not been passed in favour of the defendant no.2.

45. The specific case of the defendant no.4 in the application that it has allegedly purchased 425.018 sq. ft. super built-up area from the defendant no.2 on the Third Floor

under an alleged conveyance dated October 15, 2018. The defendant no.4 further has contended that the defendant no.2 had conveyed the title in favour of the defendant no.4 on the strength of the conveyance dated February 06, 2018 executed by the plaintiff in favour of the defendant no.2.

46. On a plain, meaningful and comparative reading of both the plaints, this Court finds that in the previous suit the plaintiff has, inter alia, sought for correction of some portion of the conveyance with a declaration that no right, title or interest was conveyed by the plaintiff in favour of the defendant no.2 insofar open area is concerned. Plaintiff has further contended that the transfer of title by the plaintiff in favour of the defendant no.2 is not complete as the defendant no.2 has not paid the IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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full consideration amount, hence, in the second suit the plaintiff has claimed consequential reliefs against the defendant no.2 along with the defendant nos.3 and 4, who claimed to be alleged purchasers under the defendant no.2. Therefore, on a parallel reading of the two plaints and the reliefs claimed thereunder, this Court is of the considered view that the issues relating to defendant no.4 or 3 in the second suit is not an issue or not substantially in issue with that of the previous suit. In any event, if the previous suit is decreed, the decree cannot operate as res judicata against the defendant nos.3 or 4, as they are not parties to the previous suit. Therefore, an independent trial in the second suit is required against the defendant nos.3 and 4.

47. Inasmuch as, admittedly, the defendant nos.3 and 4 claimed their alleged right, title and interest in the property through the defendant no.2. The defendant no.2 is party in both the suits. Since the defendant no.2 is impleaded and present in the second suit, it cannot be construed or held that the defendant nos.3 and 4 are litigating under the same title with the alleged same title that of defendant no.2. Defendant no.2 has filed its written statement and has been contesting the suit with its own defense. Defendant nos.3 and 4 have not filed their written statement in the second suit. On an overall assessment of the facts and circumstances, this Court finds that neither the defendant nos.3 and 4 can be construed to be litigating under the same title of the defendant no.2 and moreover defendant nos.3 and 4 not being parties to IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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the previous suit are disqualified to maintain their respective applications filed under [Section 10](#) of the Code.

48. Inasmuch as the plea taken by the plaintiff that since the entire payment has not been made by the defendant no. 2 in favour of the plaintiff under the conditional conveyance, the portion of the property sought to be conveyed in favour of the defendant no. 2 has not been conveyed in favour of the defendant no. 2 by operation of Section 55(4)(b) of the Transferred of Property Act, as the title had not past, is also required to

be gone into during the trial of the first suit and on the outcome of which the alleged right, title and interest of the defendant nos. 4 and 3 would depend. If such plea of the plaintiff is decided in the affirmative, then in absence of any title on the property in favour of the defendant no. 2, claims of the defendant nos. 4 and 3 would be rendered without any title on the property. Thus, until the title of the defendant no. 2 is clearly adjudicated upon, it cannot be said that the defendant nos. 4 or 3 are litigating on the same title of the defendant no. 2. This Court is therefore of the considered view that when the defendant no. 2 is a party in both the suits, the defendant nos. 4 or 3 would have no right to claim stay of the trial of the second suit. Moreso, when they are not parties in the previous suit.

49. In the matter of: [ASPI JAL](#) (Supra), the Hon'ble Supreme Court had observed as under:-

"10. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences v. C. .Parameshwara, IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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in which it has been held as follows: (SCC pp. 259-6-, para 8) " 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 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."

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 IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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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. As stated earlier, the eviction in the third suit has been sought on the ground of non- user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of [Section 10](#) of the Code is not attracted in the facts and circumstances of the case."

50. In the matter of: [Bepin Behari Majumdar and others](#) (supra), the Hon'ble Division Bench of this Court had observed as under: -

"4. It is plain that if [Section 10](#) is otherwise applicable, its operation is not excluded by the fact that the previously instituted suit has reached the stage of an appeal. This is clear from the use of the expression. "Before His Majesty in Council," and this view was expressly adopted in the case of [Chinnakaruppan Chetty, A.L.M.S.S. v. M.V.M. Meyappa Chetty](#) where it was pointed out that proceedings on appeal are for many purposes deemed only a IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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continuation of the suit instituted in the first Court, Pichuvayyengar v. Seshayyngari and Kristnama Chariar v. Mangammal. Consequently, the mere fact that the decree in the previously instituted suit is under appeal in this Court, does not enable the plaintiffs to invite us to hold that [Section 10](#) is inapplicable. The question, accordingly, reduces to this; is the matter in issue in the subsequently instituted suit for rent also directly and substantially in issue in the previously instituted suit? The suits are between the same parties litigating under the same title and that requirement of the Code is fulfilled. What, then, is the meaning of the expression "the matter in issue." The defendants invite us to hold that the expression is equivalent to "any of the questions in issue." The obvious answer is that if that had been the intention of the framers of the section, appropriate words might have been used to bring out such sense. We are of opinion that the expression "the matter in issue" has reference to the entire subject in controversy between the parties."

51. In the matter of: [Adhish Chandra Sinha](#) (supra), the Hon'ble Division Bench of this Court had observed as under: -

"5. But in our considered opinion, [Section 10](#) of the Code on its terms does not apply to the present case in view of the subject-matter involved in the two suits. The learned Subordinate Judge in directing stay under [Section 10](#) of the Code has taken the view that, since one of the issues, which would arise for consideration in both the suits, namely, whether the notice dated January 16, 1978, to quit given by the defendant is legal, valid and binding on the defendant or not, the subsequent Alipore suit should be stayed. We, therefore, find that the learned Subordinate Judge made a grievous error in assuming jurisdiction under [Section 10](#) of the Code which he had none to make such an order on a clear misreading of the said provision of the Code. In order to attract [Section 10](#) of the Code the subject-matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit. In that way the subject-matter of two suits must be identical. Merely because one of the questions in issue in the same as in the other suit, would not make the subject-matter identical. It was Sir Ashutosh Mookerjee who IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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pointed out in [Bepin Behari V. Jogendra Chandra](#), AIR 1917 Cal 248, that 'the matter in issue' is not equivalent to 'any of the questions in issue', it means the entire subject-matter in controversy. This view has been consistently followed by this Court vide [Narendra v. Rungta & Sons](#), 70 Cal WN 375: ([AIR 1966 Cal 382](#)), and [Shaw Wallace v. Bholanath](#). AIR 1975 Cal 411 (The observation of Chakravarti, C.J. in [Shorab M. Modi v. Mansata Film Distributors](#), AIR 1957 Cal 727, being otherwise explainable as not laying down any contrary view)."

52. In the matter of: [Mahadevappa](#) (supra), the Co-ordinate Bench of this Court had observed as under :-

"Mr. Coyajee on behalf of the appellant has not disputed the proposition that the decree in a former suit based on a compromise has to all intents and purposes the same effect, so far as the rule of res judicata is concerned, as a decree passed per invtium (Bhaishankar Nanabhai v. Morarji Keshavji & Co. (1911) I.L.R. 36 Bom. 283, S.C. 13 Bom. L.R. 950) The question that arises under [Section 11](#) of the Civil Procedure Code is whether any matter directly and substantially in issue of suit No. 50 of 1928 between the parties litigating under the same title as in the present suit, which was heard and finally decided in that suit, is now again directly and substantially in issue in the present suit. According to the learned trial Judge such a matter is the question whether defendant No. 2 had the power to adopt. In suit No. 50 of 1923 the plaintiff was the present defendant No. 1, and defendants Nos. 1 and 2 in that suit are, respectively, the plaintiff and defendant No. 2 in the present suit. There is no doubt, therefore, that the two suits were between the same parties. One question that arises is whether these parties are litigating under the same title. In suit No. 50 of 1928 Mahadevappa, i.e. defendant No. 1, claimed to have been adopted as Somappa's son in 1927. In the present suit he claims to have been adopted as Somappa's son in 1935. It seems to me difficult to say, therefore, that he is litigating under the same title. The title that he has sought to make out in the two suits has, according to him, been derived from different transactions. Prima facie, therefore, his title in each suit, though of the same nature in both, is IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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different. In Shidlingappa Maharudrappa v. Ramappa, which I decided sitting singly, the facts were somewhat similar to those in the present suit, and I held that the parties there could not be said to be litigating under the same title in the two successive suits."

53. In the matter of: Siba Prasad Jash (supra), the Coordinate Bench of this Court had observed as under :-

10. Question now is whether the matter in issue in both the suits is directly and substantially the same so as to satisfy one of the most essential requirements of [Section 10](#) of the Code. It is true that the learned Chief Justice has said that the "fact that one is a suit under the agreements entered into by the parties and the other is a suit de hors the agreements does not make a substantial identity of the subject-

matter per se impossible" in the case of [Shorab Merwanji Modi v. Mansata Film Distributors](#), ([AIR 1957 Cal 727](#)) (supra), at page 734 of the report, but his Lordship has qualified his own statement by using the expression "per se impossible." The question as

to whether the entire field of controversy in both the suits is the same must be determined on the construction of the pleadings in both the suits and, therefore, no new principle has been [laid down in](#) that case by the learned Chief Justice.

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12. In our opinion, the expression "principal matter in issue" used by the learn-ed Chief Justice and followed by Mitra, J., should be read, understood and construed in consonance with and subject to the following statement of Sir Ashutosh Mookerjee in the case of [Bepin Behari v. Jogendra Chandra](#), reported in 24 Cal LJ 514 at p. 515 = (AIR 1917 Cal 248 at p.

249) of the report:

"What then is the meaning of the expression 'the matter in issue.' The defendants invite us to hold that the expression is equivalent to 'any of the questions in issue.' The obvious answer is that if that had been the intention of the framers of the section, appropriate words might have been used IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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to bring out such sense. We are of opinion that the expression 'the matter in issue' has reference to the entire subject in controversy between the parties. The object of the section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matters in issue."

13. One of the most essential conditions of [Section 10](#) is that the matter in issue in the later suit which is sought to be stayed must be directly and substantially in issue in the earlier suit which is pending in the same or in any other court of concurrent jurisdiction. A mere identity of some of the issues in both the suits is not sufficient to attract this section in view of the law [laid down by](#) Sir Ashutosh Mookerjee. Unless the decision of the suit operates as res judicata in the other suit it cannot be said that the matter in issue is "directly and substantially" the same in both the suits. In other words, the decision in one suit must non-suit the other suit before it can be said that the matter in issue in both the suits is directly and substantially the same.

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15. It is well-settled that unless an issue is framed and decided by the Court it cannot operate as res judicata in a subsequent suit between the same parties or their privies. It is true that the written statement in the Ferrukhabad suit has raised some of the questions which are also present in the plaint of the Calcutta suit, but unless in both the

suits the entire subject-matter in controversy between the parties are substantially and directly the same it cannot be said that the matter in issue in both the suits is the same. There being no issue in the Ferrukhabad suit as to the terms and conditions of the dealership agreement nor as to its breach, in my opinion, it cannot be said that the matter in issue in both the suits is substantially and directly the same. Hence, the judgment under appeal cannot be supported."

54. In the matter of: [Challapalli Sugar Ltd.](#) (Supra), parties were common and same subject-matter was involved in both the suits. In the IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026 IN CS-COM/297/2024 A.R.,J.

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said judgment all the other judgment namely, AIR 1917 Cal 248, AIR 157 Cal and AIR 75 Cal 411 were considered. It was held that, the subject-matter in controversy was the same which arose from the same contract and same transaction, the ratio of [the said judgment](#) would not apply in the facts of this case.

55. In the matter of: [Abdul Gani and Anr.](#) (supra), the case was based on [Section 11](#) of the Code i.e. res judicata [in that case](#) the plaintiffs in the second suit where the defendants in the first suit. Therefore, parties were common in both the suits, thus, the ratio of the judgment would not apply in the facts of the instant case.

56. In view of the forgoing reasons and discussions, this Court is of the firm and considered view that the defendant nos.4 or 3 are not qualified to maintain an application under [Section 10](#) of the Code. The applicants/defendants firstly are not parties in the previous suit and secondly, they cannot claim to be litigating under the same title of the defendant no.2, who is a party in the previous suit. Both the applications are, therefore, devoid of any merit and are not maintainable.

57. The applicants/defendants have not filed their written statement. The applications filed by them are not only devoid of any merit but also frivolous, harassing and vexatious in nature and have been filed in abuse of the process of law and this Court.

58. The pendency of these two applications have delayed the trial of the suit.

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59. Considering the nature of the suits, it is directed that both the previous and second suit henceforth shall be heard and considered in an analogous trial.

60. Accordingly, both the applications being IA No. GA-COM/9/2025 and IA No. GA-COM/11/2026 stand dismissed with cost assessed at Rs.25,000/- each to be paid by the defendant nos.4 and 3 respectively in favour of Calcutta High Legal Services Committee through a banker's instrument within a period of six weeks from date.

61. Defendant nos.4 and 3 shall provide copies of the money receipt showing payment of cost to the learned Advocate on record for the plaintiff.

(Aniruddha Roy, J.) (D. Das, P.A.) IA No. GA-COM/9/2025 & IA No. GA-COM/11/2026
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