

CR-2409-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-2409-2015 (O&M).
Decided on: April 7, 2015.**

Geetinder Grewal

..... Petitioner(s)

Versus

Shubhinder Singh Brar and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Puneet Gupta, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL)

Vide impugned order the application filed by the defendant- petitioner under Section 10 CPC, has been dismissed. Plaintiff- respondent No.1 had filed a suit for recovery of mesne profits etc. from the petitioner impleading her as defendant No.1 claiming that the plaintiff is owner to the extent of 12/25 share in house mentioned in the heading of the plaint and that the defendant- petitioner has been in illegal possession of the said house. The defendant- petitioner had claimed that the defendant filed a probate petition under Section 276 of the Indian Succession Act for grant of probate in respect of the Will dated 19.11.1993 which was decided by the Civil Judge (Sr., Divn.), Chandigarh, vide judgment dated 8.5.2012 upholding the validity of the Will. Appeal filed against the said order has been dismissed by the Additional District Judge,

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Chandigarh on 7.3.2014. The plaintiff respondent has filed an appeal before the High Court in which the defendant- petitioner had been summoned.

In view of said circumstances, defendant- petitioner sought stay of the proceedings in a suit filed by the plaintiff-respondent on the ground that the defendant No.3 Smt.Nirmal Kaur had filed an appeal in the High Court against probate petition and she has also filed a suit for partition of the suit property on the basis of natural succession wherein the petitioner and the plaintiff-respondent are also parties. Although the said suit filed by Nirmal Kaur for partition has been decreed, the petitioner- defendant No.1, has filed an appeal against the said judgment and the judgment passed by the Civil Judge (Sr., Divn.), Chandigarh, is subject matter of the appeal which is pending in the Court of Sh.Paramjit Singh, Additional District Judge, Chandigarh. Claiming that the subject matter in the earlier litigation and the suit filed by the plaintiff being directly and substantially same, the subsequent suit has been sought to be stayed. The trial Court has dismissed the application vide impugned order Annexure P14, holding that in the earlier suit of partition titled Nirmal Kaur Vs. Geetinder Grewal, the house in question has been allowed to be partitioned and a preliminary decree has been passed regarding the same and no stay has been granted in the appeal and the house in question is not mentioned in the Will regarding which probate had been claimed, as such there was no

ground for staying the suit under Section 10 CPC.

I have heard the learned counsel for the petitioner at length and carefully gone through the issues involved in the earlier litigation i.e., probate petition and the partition proceedings mentioned hereinabove and I am of the opinion that the matter in issue in the suit filed by the plaintiff-respondent prima facie is not directly and substantially in issue in previously decided litigation between the parties. The defendant- petitioner may raise the plea taken up in the application under Section 10 CPC, in the written statement to defeat the rights of the plaintiff-respondent by taking up the plea of res judicata, implied res judicata or taking the benefit of provisions of Order 2 Rule 2 CPC.

No ground is made out for interference in the impugned order.

The petition is dismissed without prejudice to the rights of the petitioner to raise the pleas of fact and law available to her in her written statement.

April 7, 2015.
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(M.M.S. BEDI)
JUDGE