

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

CR No. 4665 of 2013 (O&M)

Date of decision: November 26, 2015

Shri Ram Diwan and others

...Petitioners

Versus

Gobind Prasad and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment ? Yes**
- 2. To be referred to the Reporters or not ? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Parminder Singh Kanwar, Advocate,
for the petitioners.

None for the respondents.

K. KANNAN, J. (Oral)

1. The plaintiffs who filed a suit for declaration that the properties described in Schedule A to K shall be used for religious purposes and for a restraint against the defendants from alienating the properties were confronted with the application filed for stay of suit under Section 10 of the Code of Civil Procedure brought at the instance of the 2nd defendant. He would refer to a suit instituted earlier in the Civil Court at Kanpur in the year 2007 by defendants No. 16 and 44 with respect to a larger extent reiterating the character of the property as trust. There are 15 defendants in that suit but the plaintiffs are not parties to the said suit. Unless there is congruity of both the parties in the suit or the persons claiming under them as well as the identity of all properties, there shall be no mandate for stay

under Section 10 of the Civil Procedure Code. The court, while allowing the application, has stayed the suit partly as regards adjudication of some of the items which are covered in the suit instituted in Kanpur. The court has no such power under Section 10 of the Code. The power exists only for either grant of stay or declining the same and partial stay for some of this properties alone is impermissible.

2. The order passed is erroneous and it is set aside. The revision petition is allowed.

November 26, 2015
prem

(K.KANNAN)
JUDGE