

**Sr. No. 245
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.4911 of 2014

Date of decision: 17.08.2015

Yaad Singh

...Petitioner

Versus

Beer Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

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

Present: Mr. Surinder Mohan Sharma, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Advocate,
for the respondent.

ARUN PALLI, J.(ORAL)

Vide order dated 24.03.2014, passed by the Additional Civil Judge (Senior Division) Ganaur, application under Order VII Rule 11 of the Code of Civil Procedure, moved by the defendant, has since been dismissed.

It was maintained that even earlier plaintiff had filed Civil Suit No.592 of 2007 for perpetual prohibitory injunction qua suit property and same was dismissed in default on 26.03.2010, thus, the present suit was barred under Order IX Rule 9 of the Code of Civil Procedure.

Learned trial Court on consideration of the matter in issue, dismissed the application moved by the petitioner-defendant and concluded as thus:

“5.Having heard the arguments and perusal of the file, I am of the opinion that the application in hand deserves to fail, as applicant/defendant has placed on file certified copy of plaint of civil suit No.592 of 2007. As the suit is at its initial stage, therefore, documents placed on file are to be taken at their face value. As per plaint of civil suit No.592 of 2007, plaintiff sought perpetual prohibitory injunction qua the residential plot measuring 450 square yards, with dimensions East to West 45 feet, North to South 90-feet and bounded as East-Plot of Ramdhan, North-play ground of Govt. Primary School Purkhas, South-Gali, situated within the Lal Dora of Village Purkhas, Tehsil Ganaur, District Sonapat, whereas, in the present case, plaintiff has sought perpetual prohibitory injunction qua residential house/plot No.843, consisting of two rooms, one store, kitchen and ten feet wide gallery and remaining open space measuring 762 square yards, with dimensions East to West 45 feet 6 inches, North to South 151 feet and bounded as East-Plot of Ramdhan son of Parbhu, West-Plot of Maha Singh and Jaibir and Houses of Parkash, Naresh and Ramphal, North-Gali, South-Gali, situated within the abadi-deh/Lal Dora of village Purkhas Rathee, Tehsil Ganaur, District Sonapat. Meaning thereby, in the present case, it cannot be concluded that the property qua which perpetual prohibitory injunction is sought is the same property qua which plaintiff instituted civil suit No.592 of 2007. As such, even if, civil suit No.592 of 2007 instituted by plaintiff against defendant was dismissed, yet, same cannot debar the plaintiff from instituting the present suit.”

I have heard learned counsel for the parties and perused the paper book.

On a due and thoughtful consideration of the matter in

issue, I am of the considered view that the instant petition is wholly devoid of merit and is thus, liable to be dismissed.

No doubt, respondent-plaintiff had even earlier filed a suit No.592 of 2007, for injunction against the petitioner-defendant. Concededly, the said suit was predicated upon a cause of action that was alleged to have accrued on 15.10.2007. Whereas, in the present suit instituted on 30.04.2013 i.e. after almost 6 years, the cause of action is alleged to have accrued in the month of March, 2013 and finally on 23.04.2013, when the defendant refused to admit plaintiff to be in possession of suit property and again sought to interfere with his possession.

Needless to assert, in a suit for injunction simpliciter, on the basis of possession, the cause of action that accrued to the plaintiff in an earlier suit filed in the year 2007, was distinct and thus, the dismissal of the said suit in default would not deprive the respondent-plaintiff from filing a fresh suit for injunction, on a fresh and separate cause of action. Further, respondent duly disclosed in the plaint, the dismissal of the earlier suit in default.

Learned counsel for the petitioner could not point as to how the second suit filed by the plaintiff based on a separate cause of action would be barred.

Vide order dated 28.07.2014, this Court had stayed the proceedings before learned trial court, therefore, parties shall appear before the trial Court on the date already fixed i.e. 25.08.2015.

Learned counsel for the parties submit that ever since the institution of the suit in the year 2013, the matter could hardly

progress and thus, learned trial Court be directed to decide the suit within specified time. Accordingly, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution. Petition being devoid of merit is dismissed.

However, learned trial Court is requested to decide the suit within a reasonable time.

17th August, 2015

vandana

**(ARUN PALLI)
JUDGE**