

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6438 of 2013(O&M)
Date of decision:09.02.2015

Joginder Das

....Petitioner

Versus

Harpal Das & others

....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Ms.Harveen Kaur, Advocate, for the petitioner.

G.S.Sandhawalia J.

Challenge in the present revision petition, filed by the defendant-petitioner, is to the order dated 07.12.2012 (Annexure P1), passed by the Civil Judge (Sr.Divn.) Ludhiana, whereby the application filed under Section 10 CPC, for staying the proceedings, has been dismissed. The reasoning given by the Trial Court is that the matter in issue is not the same and the parties were also not common.

A perusal of the paperbook would go on to show that the respondents filed the suit for declaration that they were co-owners in equal share to the extent of 2/3rd share in the land measuring 13 kanals 14 marlas and sought possession on the ground that the present petitioner-defendant was cultivating the land without their consent. The defence of the present petitioner was that he had succeeded to the land on the basis of the will left by his father, Prem Dass, dated 08.09.1977. His father had been in possession of the suit property in view of the part performance of the agreement dated 17.11.1973, executed by Niranjan Das, his brother. The plaintiffs had allegedly succeeded to the estate of Niranjan Das and the possession of the defendants was adverse and had matured into ownership. A litigation was pending in this Court between them and Niranjan Das, deceased.

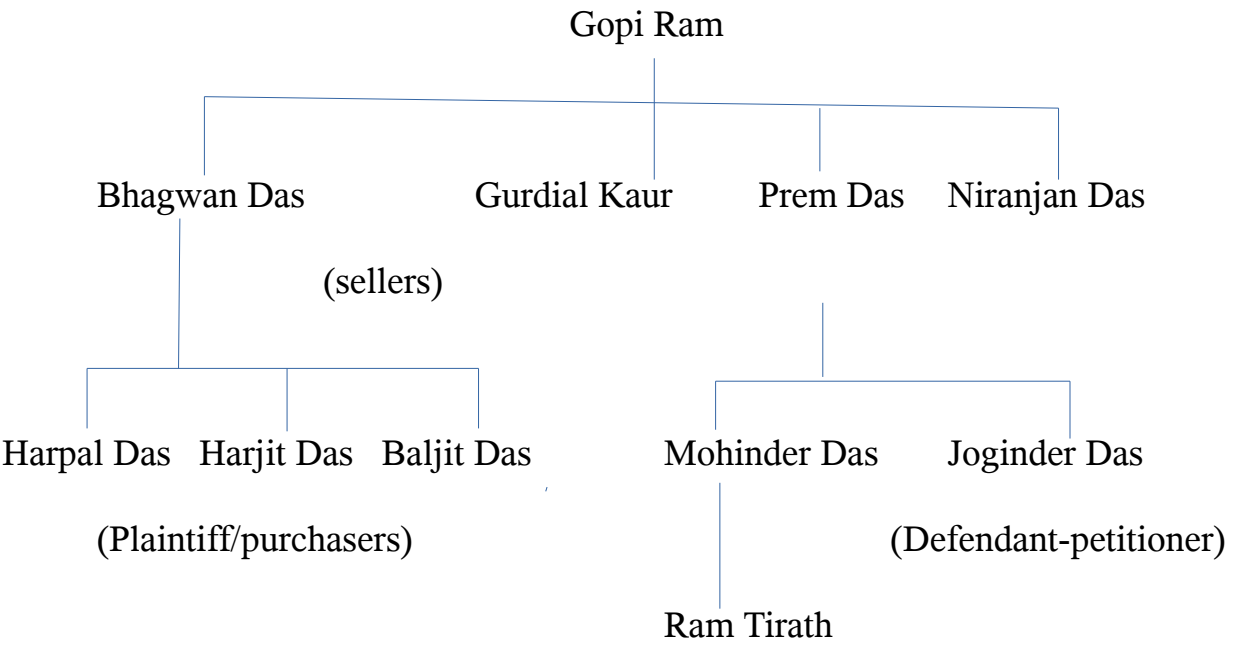
The application was filed under Section 10 CPC that the plaintiffs were claiming as predecessor-in-interest of Niranjana Das, who had executed an agreement in favour of his father and they had filed a suit against Niranjana Das. The suit had been dismissed and the appeal was pending in this Court as RSA No.1849 of 2000 and this Court had directed parties to maintain *status quo*. Accordingly, it was submitted that since the plaintiffs were claiming their rights from Niranjana Das and the matter in issue was substantially same and the rights were to be determined and the suit was liable to be stayed.

The application was contested by filing reply on ground that the case was fixed for evidence and affidavits had already been filed by the plaintiffs and the application was filed to delay the proceedings. No suit was pending against the plaintiffs in any Court of law. Resultantly, the impugned order has been passed.

A perusal of the suit filed by the petitioner against Niranjana Das, brother of Prem Dass on the strength of the agreement dated 17.11.1973 and entered on the basis of a family settlement, would go on to show that the petitioner had filed the same with another co-plaintiff, Ram Tirath, who is his nephew, being grandson of Prem Das. The dispute was, thus, within that set of family regarding transfer of the property on the basis of the alleged will and the parties to the suit were totally different.

In the present suit in question, possession was being sought as owners on the strength of a sale deed dated 28.05.1998 (Annexure P7), executed by Bhagwan Das and Gurdial Kaur, who are also children of Gopi Ram, for the land measuring 13 kanals 14 marlas. Thus, the plaintiffs were having the title on the basis of which, they were entitled to claim possession and their suit could not be stayed merely on the ground that in a suit filed for declaration on the strength

of an alleged family agreement, the petitioners were in possession. The family tree is as under:



The cause of action which had arisen in both the proceedings was totally different. Section 10 provides that the matter in issue is to be directly and substantially similar in both the suits and between the same parties only in such cases, the Court is not to proceed with the suit. In the present suit, since the plaintiffs are claiming relief of possession on the strength of the registered sale deed, executed by another set of family members, the right to prosecute cannot be denied to the respondents. In such circumstances, the order passed by the Trial Court is well justified.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

09.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE