

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7381 of 2011 (O&M)
Date of decision: 17.07.2015

Amarjit Kaur and others ... Petitioners
versus
Mohinder Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Mandeep S. Sachdev, Advocate, for the petitioner.
Ms. Amandip Kaur, Advocate for respondent Nos. 1 and 6.

K.Kannan, J.

The revision is against the dismissal of the petition filed by defendant for stay of proceedings brought by another defendant in the suit who had himself filed an independent suit with reference to the subject matter of suit and some other items which according to him had been omitted to be included. The principal issue at challenge was consideration of whether the properties belong to a Joint Hindu Family or not. The defendant who is the petitioner here contested the suit but failed in his defense. The 1st suit had been instituted on 24.10.2000 and the decree against the petitioners as LR's of Didar Singh, the brother of the plaintiff in the suit had preferred an appeal. One of the defendants and a heir of Didar Singh and brother of the plaintiff had filed a separate suit for his own rights to be declared on the same basis that the properties belong to Hindu Undivided Family and made a specific mention of the fact that the earlier suit filed by his brother was pending. It is urged by the counsel appearing

on behalf of the respondent that as a matter of fact if the suit instituted by the respondents subsequently, he has included also some more items which were omitted to be included in the suit. During the pendency of the 2nd suit, the contesting defendants moved an application for stay under Section 10 pointing out to the congruity of issue with reference to the character of properties and sought for stay. The trial Court declined the relief and the applicants before the Court below are the revision petitioners.

Learned counsel for the petitioner refers to the judgment of this Court in Sewa Panthi Addan Shahi Vs. Sanjiv Kumar and others, 2000 (3) RCR (Civil) 644, laid down that even the pendency of the 2nd appeal in the suit instituted earlier could afford ground for grant of stay and cites the judgments, Ram Kanwar Vs. Partap Singh 1986 (1) PLR 274, Parmal and others Vs. Mst. Har Kaur 1980 RLR 246, Aspi Jal and another Vs. Khushroo Rustom Dadyburjor 2013 AIR (SCW) 2128.

The counsel would say that Section 10 is mandatory in the sense that the Court shall grant stay in relation to the suit instituted subsequently in respect of subject matter between the parties if an earlier suit is pending. Counsel would argue that the earlier suit which has a bearing to the character of property was directly and substantially an issue in the previously instituted suit. Admittedly, the appeal shall, therefore, be taken as a continuation of the suit and the subsequent suit filed by one of the defendants shall be stayed.

Counsel would also state that in the earlier suit filed by one of the petitioners, the Court has held the suit property to be joint family properties, has granted declaration not merely for the plaintiff but for the defendants as well, one of whom is now the plaintiff in the subsequent suit. According to him, the 2nd suit is also for declaratory relief and if a decree is granted, it will become null and void.

I find all the contentions to be fallacious and legally untenable. In any suit for partition or for declaration on the basis that the properties are joint family properties, every person that asserts the character of properties as belonging to the family stands in the position of plaintiff. If in the 1st suit instituted by one of the brothers he has not included all the items and when one of the defendants had remained ex-parte, and did not press for an adjudication independently for himself, there can be no bar for such a defendant who is the member of the joint family to file his own suit and seek for a similar relief. The 2nd suit here becomes relevant for it includes the suit items and sets out also several other items in the subsequent suit. There is no point at issue before me that there cannot be a stay if the earlier suit has been disposed of. On the other hand, the issue is whether it shall always be taken as mandatory that the Court shall stay its own proceedings if an earlier suit is substantially and materially on an issue that was relevant in the earlier instituted suit. The expression used in Section 10 sounds like a mandatory character. But, I will not see this provision as not allowing for any discretion for a Court to stay the

proceedings or not. There may be instances when the 1st instituted suit had travelled to higher forums before the 2nd suit was instituted. In such a situation a subsequent suit could be stayed by reference to an earlier instituted action that has travelled to an Appellate Forum. In this case, the 1st instituted suit was on 24.10.2000 and before the trial have concluded one of the defendants in that suit who had remained ex-parte had brought his own suit for declaration before the conclusion of trial of the earlier suit. It should have been possible for the parties to press for a joint trial even at that time if it was pending in the same Court. If it was pending in different Courts it should have been still possible if any of the parties apprehended that there was likely to be conflicting judgments to go for a joint trial. The petitioners who were the defendants should have known that one of the co-defendants has actually filed his own suit and if they wanted to obviate any conflict between the two cases, they could have applied for even stay of subsequent suit, if they did not want to encumber themselves with trial of two cases simultaneously.

The 1st suit was decreed on 04.09.2008 declaring the properties to be joint family properties and the appeal is pending now. It is at this stage, after filing the appeal that some of the defendants who were the petitioners filed an application for stay. The plaintiff in the subsequent suit has definite reasons why he would want the trial of his case to be unaffected by the pendency or institution of earlier case. His apprehension is that the defendants are now plotting out various parcels of the land and

changing their character an indefinite stay of his own suit will hamper the exercise of rights in respect of all the properties of the family that had not been included in the earlier suit.

In my view, the justification for a separate suit and requirement for trial is amply demonstrated and I will read Section 10 CPC, to still give the discretion to the Court to consider whether the stay could shall be granted or not. I pointed out already that the defendants who are now petitioners did not do what they could have done, namely either press for a joint trial or for stay of a subsequently instituted suit when the 1st suit was still pending when trial had not concluded. As of now, if there is a judgment already granted by the Court, the plaintiff is prepared to take the risk of seeking for an adjudication regarding the character of property in his suit afresh. If earlier instituted suit had not become final, the issue of *res judicata* did not arise, the earlier judgment may have persuasive value and I let the 2nd suit to continue unaffected by a contest among parties in the other suit which is pending appeal. Either party who is aggrieved may bring an appeal and at that stage, there could even be a prayer by any party for a joint consideration of both the appeals. I will not stretch too far into the realms of conjectures and I would let the circumstances that exist there to dictate the course of action.

The revision petition is dismissed with above observations.

17.07.2015
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(K.KANNAN)
JUDGE

