

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

**CR No.7260 of 2014 (O&M)
Date of decision: 09.02.2015**

Nirmal Singh and another

....Petitioners

Versus

Shiv Kumar and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. G.S.Sirphikhi, Advocate for the petitioners.

Mr. R.D.Bawa, Advocate for respondent Nos.1 to 10.

Rakesh Kumar Jain, J. (Oral)

The petitioners have challenged the order dated 22.09.2014 by which the application filed by the petitioners under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been dismissed.

In short, counsel for the respondents has submitted that the petitioners were the tenants over the land in dispute, who allegedly purchased it vide two sale deeds dated 15.03.2001, in respect of 21 kanal 9 marlas and 19 kanal 12 marlas, each belonging to the respondents and got it registered on 12.04.2001. It is alleged that respondents No.1 to 10 filed a Civil Suit No.298/21.08.2004 for seeking a declaration regarding validity of the aforesaid two sale deeds and also

for possession after eviction of the petitioners. In that suit, the petitioners filed the written statement dated 18.10.2014 in which they have alleged that they have also filed Civil Suit No.257 dated 28.07.2004 in respect of the sale deed of land measuring 21 kanals 9 marlas and Civil Suit No.258 of 2004 of the same date in respect of land measuring 19 kanal 12 malras. In both the Civil Suits bearing No.257 and 258 of 2004 filed by the petitioners, the declaration has been sought that the plaintiffs therein have become owners of the property in dispute on the basis of two sale deeds dated 15.03.2001 registered on 12.04.2001.

It is also submitted that the petitioners had earlier filed an application under Section 10 of the C.P.C. which was dismissed as not pressed on 15.02.2013. It is also alleged that issues in the present suit were framed on 15.02.2013 and an application filed for consolidation of all the suits was dismissed on merits on 4.07.2014. The petitioners also filed an application for amendment of the written statement on 29.04.2013 which was dismissed on 19.07.2013 and thereafter, the present application was filed on 10.01.2014, which has been dismissed on 22.09.2014 and hence the present revision petition.

Counsel for the petitioners has submitted that the parties to the suit in the Civil Suit Nos. 257 and 258 of 2004 and the present Civil Suit No. 298 of 2004 are the same and since Civil Suit Nos.257 and 258 were filed prior in time therefore, the proceeding in Civil Suit No.298 of 2004, which was filed later on, should have been stayed by the learned trial Court in terms of Section 10 of the CPC.

Counsel for the respondents has submitted that respondents No.1 to 10 are the plaintiffs in Civil Suit No.298 of 2004 and they have prayed for a declaration that the sale deeds in favour of the present petitioners are illegal, null and void and not binding on their rights and has relied upon a judgment of the Supreme Court in the case of **State of A.P. and others Vs. D. Raghukul Pershad (D) by Lrs and others**, 2012 (4) Recent Apex Judgement (RAJ) 400, wherein it has been held that the tenants shall have to surrender the possession to the landlords before challenging the title of the landlords. It is also submitted that the petitioners have earlier filed an application under Section 10 of the CPC on 10.03.2009 which was dismissed on 15.07.2013, therefore, the second application was not maintainable.

It is also submitted by counsel for the respondents that the application has been filed at the belated stage in spite of the fact that evidence of the plaintiffs in Civil Suit No.298 of 2004 has already been closed and the case is now fixed for evidence of the defendants/petitioners.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that before I decide the question involved in this case, it would be relevant to reproduce Section 10 of the CPC, which reads as under:-

“No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having

jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court”.

From the aforesaid facts it is apparent that the petitioners are claiming their right over the property in dispute on the basis of sale deed dated 15.03.2001, whereas the defendants are claiming their right over the property in dispute by challenging the sale deeds dated 15.03.2001 being obtained by the petitioners by way of fraud. The litigation between the parties or the question is about the genuineness of the sale deeds dated 15.03.2001. If the petitioners fail to prove validity of the sale deeds dated 15.03.2001 in the Civil Suit Nos. 257 and 258 of 2004 in which the plaintiffs, in Civil Suit No.298 of 2004 are the defendants and if the forgery is not proved, Civil Suit No.298 of 2004 would itself become infructuous. Once the petitioners are held not to be the owners of the property in dispute, they would not have any right over the suit property except for their tenancy rights, if any. In those circumstances, the present plaintiffs in the present suit have to change the direction of their suit for seeking possession of the property in dispute on the ground available to them. So far as, the judgment relied upon by the counsel for the respondents is considered, it has no relevance to facts and circumstances of the present litigation because the petitioners would surrender the possession when it would be settled that they are not the owners of the property in dispute but here is the case where the ownership of the petitioners has been challenged by the

respondents by way of Civil Suit No.298 of 2004 and they are also contesting the suits filed by the petitioners i.e. Civil Suit No.257 of 2004 and Civil Suit No.258 of 2004, therefore, until and unless this issue is decided as to whether the present petitioners have become owners of the suit property by way of sale deed executed on 15.03.2001 and registered on 12.04.2001, the suit filed by respondents No.1 to 10 has to be stayed.

In view of the observations made here-in-above, the present revision petition is hereby allowed and the impugned order is set aside.

February 09, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge