

CR No. 7277 of 2014

Date of decision: 27.11.2015

Alka Gupta and another

.....Petitioners

versus

Gian Chand Gupta and others

.....Respondents

Coram: Hon'ble Mr. Justice Arun Palli

Present: Mr. V.K.Sandhir, Advocate
for the petitioners.Arun Palli, J.(Oral)

Vide order being assailed dated 24.09.2014, rendered by Civil Judge(Junior Division), Amritsar application moved by the plaintiffs/petitioners for consolidation of the suit i.e. Swaran Lata vs. Alka Gupta, with the suit filed by the petitioners i.e. Alka Gupta and another vs. Gian Chand and others, had since been dismissed. The conclusion arrived at by the trial court in its order reads as thus:-

“I have perused the case file. There is nothing on record pertaining to the above said titled as ‘Swaran Singh V/s Alka Gupta’. However, learned counsel for the plaintiff argued that the above said suit is pending in the Court of Ms. Surekha Rani, Learned CJJD, Amritsar and the relief being sought by defendant no. in the said suit is for Mandatory Injunction. Needless to mention over here that the present suit filed by the plaintiff is for declaration and permanent injunction with respect to the property as fully detailed in the head note of the plaint. The relief being sought in the present suit is different from the relief of Mandatory Injunction, No reason has been brought in my notice that how the above said suit

would cause defeat injustice if the judgments from the above said suits are pronounced separately. Merely by writing that the separate decision of the above said suits would cause conflicting judgments does not provide any basis for consolidation of the above cited suits. As such, in the light of above said discussion, the present application is hereby dismissed.”

Learned counsel for the petitioners submits that earlier he had moved an application under Section 10 of the Code of Civil Procedure for staying the proceedings in the suit filed by respondent No.2 but the same was dismissed. However, in a revision preferred by the petitioners i.e. Civil Revision No. 1495 of 2013, this Court, though did not stay the proceedings in the subsequent suit but observed that it would be appropriate if both the suits are tried together. Accordingly, the suit filed by respondent No.2, pending before Ms. Surekha Rani, Civil Judge(Junior Division), Amritsar was ordered to be transferred to the Court of Ms. Amita Singh, Civil Judge (Junior Division) and the civil revision was, accordingly, disposed of. It is contended that despite the order dated 4.3.2013 passed by this Court, though, both the suits are now pending before the same court but are not being tried together. None has caused appearance on behalf of the respondents despite service.

It would be apposite to refer to the order dated 04.03.2013 rendered by this Court, which reads as thus:-

“It would be only appropriate that both the suits are tried together although filed in different Courts. The joint trial of the suits would be appropriate. I dispense with notice to the respondents and order withdrawal of the subsequent suit filed and pending before the Civil Court(Jr. Divn.) Ms. Sulekha

***Rani to be transferred to the Civil Judge, (Jr, Divn.)
Ms. Amita Singh. Both the suits shall be tried together
by joint trial. The Civil revision is disposed of.”***

Ex facie, the order passed by this Court on 4.03.2013 does not even find reference in the order that has been assailed. Apparently, in the wake of the order dated 4.03.2013, the order under challenge cannot be sustained. Consequently, the revision is accepted and order dated 24.09.2014 is set aside. The matter is remitted to the trial court to reconsider and decide the application moved by the petitioners, strictly, in accordance with law, within a period of one month from the receipt of certified copy of this order.

27th November, 2015
Shivani Kaushik

[ARUN PALLI]
JUDGE