105.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7915 of 2015
Date of decision: 05.12.2015

Harish Saini ... Petitioner

versus

Rajesh Saini and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pritam Saini, Advocate,
for the petitioner.

K.Kannan, J. *(Oral)*

1. The 1st defendant is the revision petitioner before this court.

2. The plaintiff had filed a suit for a declaration that the Will said to have been executed by the mother was not genuine and for injunction that he was in possession of the property as owner and his possession could not be disturbed by his brothers who are the defendants. The trial court had originally granted an injunction as an interim measure and in the appeal by the defendants against the said order, the order of injunction was modified as one for retention of status quo by its order dated 13.07.2015.

3. On 16.07.2015, the plaintiff filed a suit again reiterating a prayer for declaration that the Will was not genuine and seeking

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for partition and separate possession of the suit property. The contention taken in the application for rejection of the plaint was the cause of action for the second suit existed even when the first suit was instituted and the subsequent suit was barred by Order 2 Rule 2 CPC. The court held that the suit for injunction filed on the basis that he was in possession could not in any way be taken as foreclosing a right to demand partition, if the plaintiff so chose. Therefore there was not nothing improper about filing a subsequent suit for partition and found no justification for the objection taken by the defendant to prevail. Accordingly, the court below dismissed the application.

4. The reasoning is correct and I will not make any intervention. I will only direct that both the suits may be taken together and a common judgment delivered. Since the order is being passed in the absence of the respondent/plaintiff, the court will put him on notice of the fact of the order and take up the cases by a joint trial.

5. Revision petition is dismissed but with the above observations.

(K.KANNAN)
JUDGE

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