

In the High Court of Punjab and Haryana at Chandigarh.

**CR No. 822 of 2015
Decided on 19.2.2015**

Ajay Kumar Verma

--Petitioners

Vs.

Ashwani Kumar and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Sanjay Verma, Advocate, for the petitioner

Rakesh Kumar Jain,J: (Oral)

The petitioner is aggrieved against the order dated 09.1.2015, dismissing his application filed under Section 10 of the Code of Civil Procedure,1908 (for short, 'the CPC') for staying the proceedings in the subsequent suit fled by the respondents.

In short, the parties to the lis are real brothers. The plaintiff has claimed his titled over the property in dispute on the basis of a consent decree passed in his favour in a suit filed by him against his father and the respondent is a licensee over it. The petitioner thus, filed the suit for seeking ejectment of respondent No.1. In that suit, the respondent No.1, while filing the written statement set up a counter claim alleging himself to be the owner of the property in dispute and prayed for permanent injunction to restrain the present petitioner from interfering in his peaceful possession. Thereafter, he filed another suit for permanent injunction claiming himself to be the owner of the property in dispute and restraining the petitioner from alienating the suit property in any manner.

The petitioner filed an application under Section 10 read with Order 2 Rule 2 of the CPC that the second suit cannot be allowed to proceed as the parties and matter in both the suits is substantially the same.

The trial Court dismissed the application on the ground that the respondent has claimed injunction in the counter claim to restrain the petitioner from interfering in his possession, whereas in the subsequent suit prayed for injunction, not to alienate the suit property.

Learned counsel for the petitioner has argued that counter claim has to be tried as a suit and since in both the cases respondent No.1 is claiming himself to be the owner of the property in dispute, therefore, the matter in both the suits is substantially the same.

After hearing learned counsel for the petitioner and examining the record, I am of the considered opinion that matter in both the suits are altogether different because in the counter claim respondent No.1 has prayed for permanent injunction not to interfere in his peaceful possession, whereas in the second suit., he has prayed for permanent injunction to restrain the petitioner from alienating the suit property in any manner.

In view thereof, there is no error in the order of the Court below in dismissing the application. So far as Order 2 Rule 2 of the CPC is concerned, it cannot be decided merely by filing an application as it is necessary for the Court to frame an issue and allow the parties to lead evidence to prove that the plaintiff in that suit had the opportunity to ask for that relief also at the time when the previous suit/counter claim was filed.

Hence, the present revision petition is hereby dismissed.

19.2.2015
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(Rakesh Kumar Jain)
Judge