

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

**CR No.956 of 2015 (O&M)
Date of decision: 04.09.2015**

Sh. Anuranjan Singh

... Petitioner

Vs.

Mrs. Meenakshi Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Saurabh Bajaj, Advocate
for the petitioner.

Mr. B.S.Bedi, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 04.02.2015, whereby, an application filed by the petitioner-plaintiff in the suit titled as Anuranjan Singh vs. Mrs. Meenakshi Singh and others, to set aside the release deed dated 03.03.2000 executed by Smt. Shubh Sher Singh in favour of her son Sarabjit Singh as null and void, has been dismissed.

Mr. Saurabh Bajaj, learned counsel appearing on behalf of the petitioner-plaintiff submits that civil suit dated 25.03.2006 titled as Harkirat Singh Sawhney vs. Manan Jai Singh and others had

been filed claiming ownership of the property in dispute, on the basis of the Will dated 25.02.2003, executed by Smt. Shubh Sher Singh. He further submits that the aforesaid suit has been dismissed, vide judgment and decree dated 20.09.2014. He further submits that though the appeal is pending before the lower Appellate Court and petitioner has been arrayed as defendant-respondent in the aforesaid suit/appeal. Since petitioner is legatee of Will dated 25.02.2003, therefore, the matter, directly and substantially is the same, in the suit filed by Harkirat Singh Sawhney and one filed by the petitioner. Keeping in view the aforesaid position, an application under Section 10 of the CPC, had been filed, which has been dismissed by the trial Court in a most fallacious and erroneous manner, much less, there has occurred illegality and perversity in the impugned order, which is liable to be set aside.

Mr. B.S.Bedi, learned counsel appearing on behalf of the respondents submits that the matter in issue is not directly and substantially same. Moreover, provisions envisaged under Section 10 of the CPC, can be invoked during the pendency of the suit and not in appeal.

In support of his aforesaid contention, he relied upon the judgments of this Court in **The Karnal Distillery Co. Ltd. vs. Mr. L.P.Jaiswal Vol.LII-1950 PLR 426** and **The Bharat Nidhi Ltd. Delhi vs. Shri Shadi Lal Vol. LVI 1954, PLR 12.**

He further submits that there is no illegality, infirmity and

perversity in the order and the order is perfect and justified. Moreover, suit titled as Anuranjan Singh vs. Mrs. Meenakshi Singh and others, has been dismissed, therefore, the petitioner, herein would have independent remedy to seek declaration by challenging the release deed.

Mr. Bajaj, Advocate, in rebuttal has relied upon the judgment of this Court in **Jaswant Singh and others vs. Surjant Singh** 1984(2) RCJ 634 to contend that appeal is continuation of the suit, therefore, the provisions of Section 10 would be applicable.

I have heard learned counsel for the parties and appraised the paper book.

On going through the provisions of Section 10 CPC, it leaves no manner of doubt that the application can be filed, only, during the pendency of the suit. One suit titled as Anuranjan Singh vs. Manan Jai Singh and others, was filed in the year 2006, whereas, other one titled as Anuranjan Singh vs. Mrs. Meenakshi Singh and others, on 25.04.2014. In essence, the suit was filed five months before adjudication of the civil suit titled as Harkirat Singh Sawhney vs. Manan Jai Singh and others and the same was dismissed vide judgment and decree dated 20.09.2014. Even by that time, issues in subsequent suit had not been framed. It has been pointed out that at this stage, the suit is fixed for plaintiff's evidence.

There is no dispute with regard to ratio decidendi culled out in Jaswant Singh's case (supra) but the fact remains that case in

hand, in both suits, different declaration were sought, one for Will and another for release deed.

Therefore, contention that present case squarely falls within the dictum rendered in Jaswant Singh's case (supra) is hereby repelled.

In view of what has been observed above, there is no illegality, much less, perversity in the impugned order and the same cannot be said without jurisdiction.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

September 04, 2015
savita