

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

CR No.1487 of 2015
Date of decision : 29.07.2016

Jaswant Singh and another

...Petitioners

Versus

Kewal Singh and another

...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. H.S. Bedi, Advocate for the petitioners.

Mr. Nakul Sharma, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned order, whereby the application under Section 10 of CPC seeking stay of the subsequent suit (Annexure P-5) filed on 04.05.2009 claiming following relief:-

“Suit for permanent injunction restraining the defendant Nos.1 and 2, themselves through their agents, servants or assignee from demolishing or cause to demolish causing any injury or cause to any injury to the Khal (water channel), existing in between Khasra No. of rect. No.25, Khasra No.20 (7-12) & 21 (7-12) and 16/2 (4-9) & 25/2 (6-2), for irrigation of the land comprised in rect. no.25, khasra No.17/2 (4-19), 20(3-1), from the electric tubewell

existing in Khasra No.21 of rect. No.25, being driven by the electric motor running under account no.A-828 and further restraining the defendant Nos.1 and 2 from interfering or cause to interfere in the use of the share of the plaintiff in the abovesaid electric tubewell.”

has been dismissed.

Learned counsel for the petitioner submits that the plaintiff had already filed civil suit (Annexure P-3) on 04.06.2008, claiming following relief:-

“Suit for permanent injunction restraining the defendant no.1 to 6, their agents and servants from making obstructions in the use of the electric motor having connection no.A-828 installed over the land comprised in Khata No.147/222, Rect. No.25//Kila No.20(7-12), 21 (7-12), Rect. No.26//15/2 (3-12), 16/1/1 (1-4), as per jamabandi for the year 2005-2006, situated within the revenue limits of village Salana Jeon Singh Wala, Tehsil Amloh, Distt. Fatehgarh Sahib and suit for permanent injunction restraining the defendant no.1 to 6 not to carve out any khal/pahi in the abovesaid agriculture land illegally and forcible with the dint of force and restrained the defendant no.7 from disconnecting/change of name and from shifting the electric motor having connection No.A-828 on the application of defendants.”

The suit aforementioned was partly decreed vide judgment and decree dated 10.12.2014. The question involved in both the suit is with regard to the title, therefore application invoking the provision of Section 10 of Code of Civil Procedure, was moved seeking stay of the suit, in which the petitioner has been arrayed as defendants. This aspect has not been

noticed by the Courts below and thus urges this Court for setting aside the order by allowing the application and by staying the suit.

Mr. Nakul Sharma, learned counsel appearing on behalf of respondent submits that application under Section 10 of CPC was not maintainable as it was filed after the decision of civil suit (Annexure P-3). It is a subsequent Act and the provision of Section 10 of CPC would come into play as it envisage stay of the suit stated to be pending. Moreover, khasra Numbers are also different.

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

It would be apt to reproduce Section 10 of the Code of Civil Procedure:-

“10. Stay of Suit – 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.

The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

On juxta-position of the reliefs claimed in the aforementioned suit, I am of the view that even khasra numbers are different and moreover application under Section 10 of CPC after the decision of the suit (Annexure

P-3) vide judgment and decree dated 10.12.2014 would not be maintainable as the pith and substance of the provisions applied only to the pending suit and not with the appeal.

No ground for interference is made out.

Dismissed.

29.07.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- **Yes**

Whether reportable:- **Yes/No**