

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.4757 of 2016

Date of Decision: 18.11.2016

Rampal

.....Petitioner

Vs

Chetan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Mohit Jaggi, Advocate
for respondent Nos.1 to 3.

None for respondent Nos.4 and 5.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 05.05.2016 (Annexure P-5) passed by Civil Judge (Jr. Divn.) Mohali vide which application under Section 10 CPC for staying the proceedings of the civil suit No.633 of 2015 titled "*Chetan Singh & others vs. Rampal & others*" was dismissed.

[2]. Brief facts are that the petitioner alleged that civil suit No.1903 of 2013 titled "*Rampal vs. Mukhtiar Singh & others*" was already pending between the parties, therefore, subsequent suit in question cannot proceed in terms of Section 10 CPC.

[3]. Notice of motion was issued on 28.07.2016 by passing the following order:-

“Learned counsel for the petitioner contends that earlier suit was filed for possession by way of partition titled as Rampal Vs. Mukhtiar Singh and others. The present suit was filed by Chetan Singh and LRs of Mukhtiar Singh. The trial Court has ignored the fact that Mukhtiar Singh (deceased) was represented by Balbir Singh and Mangat Singh.

Notice of motion for 16.08.2016.

Notice re: stay.

Dasti as well.”

[4]. Learned counsel for the petitioner submitted that the earlier suit titled “*Rampal vs. Mukhtiar Singh & others*” was for separate possession by way of partition of suit property comprised in *Khewat* No.89/86/6/8, *Khatoni* No.110, *Khasra* No.32 measuring 0 *kanal* 10 *Marlas* situated in village Nanu Majra, Tehsil and District SAS Nagar (Mohali) to the extent of 1/3rd share. Declaration was also sought in the said suit that the plaintiff and defendant Nos.2 to 4 were owners and were entitled to possession to the extent of 1/4th share each of 1/3rd share of their father Hazara Singh being sons and legal heirs of Hazara Singh. Permanent injunction was also sought.

[5]. In the present suit titled “*Chetan Singh & others vs. Rampal & others*” for declaration the relief was claimed in

respect of the same property and in alternative plaintiff Nos.2 and 3 claimed separate possession by way of partition to the extent of 1/3rd share collectively. Plaintiff No.1 has also asked for separate possession by way of partition to the extent of 1/12th share.

[6]. In nutshell, learned counsel for the petitioner submitted that in the previous suit Rampal/defendant No.1 was the plaintiff, whereas Mukhtiar Singh, Chetan Singh, Gurmit Singh and Gurmail Singh were the defendants. In the subsequent suit Chetan Singh, Balbir Singh and Mangat Singh both sons of Mukhtiar Singh are the plaintiffs. Rampal, Gurmail Singh and Gurmeet Singh are the defendants. Therefore, parties are common in both the suits as Mukhtiar Singh was replaced by his sons namely Balbir Singh and Mangat Singh.

[7]. I have heard learned counsel for the parties.

[8]. The trial Court dismissed the application vide order dated 05.05.2016 primarily on the ground that the parties in both the suits are not the same as the plaintiff Nos.2 and 3 i.e. Balbir Singh and Mangat Singh were not arrayed as parties in the previous suit. Apparently, Balbir Singh and Mangat Singh are the sons of Mukhtiar Singh, who was party to the earlier suit. In the subsequent suit titled "*Chetan Singh & ors. vs. Rampal &*

Ors.,” additional prayer has been made in respect of portion of *abadi* adjoining to the street on the eastern side, which was claimed to be not partible and was in possession of the plaintiff and defendant Nos.2 and 3.

[9]. A suit for separate possession by way of partition to the extent of 1/3rd share was filed. Trial Court has not adverted to the comparison of the parties viz-a-viz. Balbir Singh and Mangat Singh being sons of Mukhtiar Singh and the factum of additional prayer made in the subsequent suit. The effect of aforesaid pleas was not adverted to by the trial Court, rendering the order to be totally non-speaking.

[10]. At this stage, this Court is not in a position to comment upon the rival pleas of both the parties, lest it may prejudice the case of the either side at the relevant time. However, this Court is of the considered opinion that the trial Court should revisit the aforesaid facts. Consequently, this case is required to be remanded back to the trial Court for having fresh assessment of facts in the light of memorandum of parties in both the suits as well as the additional prayer made by the plaintiffs in the subsequent suit. Trial Court would be at liberty to appreciate the rival pleas of both the parties afresh in the light of material on record without being influenced by any of the observation made

hereinabove and shall proceed to decide the controversy afresh.

[11]. With the aforesaid observations, the case is remanded back to the trial Court for afresh decision. Revision petition stands disposed of.

November 18, 2016
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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No