

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5591 of 2015

Date of Decision: 08.04.2016

Smt. Savitri Devi

... Petitioner(s)

Versus

Megh Raj and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Amit Jain, Advocate
for the petitioner(s).

Mr. Simranjit Singh Blassi, Advocate
for respondent No.1.

Mr. Sumit Gupta, Advocate
for respondent No.2.

Shekher Dhawan, J.

Present petition is challenge to the order 18.4.2015, passed by learned Additional Civil Judge (Senior Division), Hisar, whereby application filed by defendant No.2-Maamni alias Maamni Devi under Section 10 CPC was accepted.

Facts relevant for the purpose of decision of the present petition that two separate civil suits titled "Maamni Devi v. Meghraj &

Savitri Devi” (hereinafter referred to as “first suit”) and “Smt. Savitri Devi v. Megh Raj & Maamni Devi” (hereinafter referred to as “second suit”) were filed. First suit was filed for declaration to the effect that registered release deed No. 166 dated 5.4.2013 in respect of suit property was obtained by fraud and deception and the same is null and void and has no bearing on the right of plaintiff. Second civil suit was filed for possession of suit property i.e. double storeyed shop-cum-dwelling house and the said suit was filed on 8.10.2013. Thereafter, an application under Section 10 CPC was filed in the second suit on the ground that five months prior to the filing of first suit, second defendant-Maamni Devi had instituted suit titled “Maamni Devi v. Meghraj & Savitri Devi” in respect of the same suit property. As the matter in issue in civil suit titled “Maamni Devi v. Meghraj & Savitri Devi” is same; both the suits are between the same parties and same property, therefore, proceedings of subsequent suit titled “Savitri Devi v. Meghraj & Maamni Devi” be stayed. The Court below, after considering the application and reply thereto, accepted the application.

Learned counsel for the petitioner submitted that matter in issue in both the suits are different as relief claimed in the first suit was with regard to declaration qua legality of the release deed along with permanent injunction and the second suit was with regard to possession of the suit property. The findings of the first suit shall not operate as *res judicata*.

Learned counsel for the respondents submitted that matter in issue in both the suits is same and the Court below has rightly

decided the application and present petition is liable to be dismissed.

Learned counsel for respondent No.2 has placed reliance upon the judgments rendered by the Delhi High Court in ***Dropati Devi and Others v. Jaswant Singh and Another 2009(157) DLT 306*** and Madhya Pradesh High Court in ***Ramashray v. Smt. Kusum 2004(3) MPLJ 434.***

Having considered the submissions made by learned counsel for the parties; perusal of the case file and judgments rendered by the Delhi High Court and Madhya Pradesh High Court, this Court is of the considered view that facts of the present case are distinguishable from the facts of ***Dropati Devi 's case (supra)*** and ***Ramashray 's case (supra)***. Admittedly parties to both the civil suits are the same and the first suit is undisputedly of prior instructions. But the subject matter and relief claimed in both the suits are entirely different. The second suit involved different issue as compared to the first suit. All the findings recorded in the first suit would not operate as *res judicata* and as such proceedings of the subsequent suit cannot be and should not be stayed by the Court below. Such a view has been taken by this Court in ***Spice Communications Pvt. Ltd. v. Lakhwinder Singh and Others 2008(2) CivCC 444.*** Similar matter was also before Rajasthan High Court in ***Ranjitmal Choradia v. Shivram Singh & Others 2011(4) CivCC 857,*** wherein similar view was taken that if two separate civil suits are pending and out of them one is for declaration and in the subsequent suit, matter in issue is directly and substantially different and provisions of Section 10 CPC cannot be applicable.

Provisions of Section 10 CPC lays down that while accepting the stay application, the following conditions must be fulfilled.

- "i) the suits must be between the same parties or their successors;*
- ii) **the matter in issue in the later suit must be directly and substantially the same as in the previous suit;***
- iii) both the suits must be pending in a Court of law;*
- iv) the parties must be litigating under the same title in both the suits".*

Applying the same conditions to the present set of case, it is clear that prayer made in both the suits and relief sought for accordingly are not identical. Since the matter in issue, directly and substantially, in both the suits is not the same nor the reliefs sought for, in both the suits by the parties are identical, the provisions of section 10 CPC are not applicable to the suits filed by the parties and the Court below, while passing the order dated 18.4.2015 fell in error on this point.

Accordingly, present petition is hereby accepted and impugned order dated 18.4.2015 is set aside.

(Shekher Dhawan)
Judge

April 8, 2016
"DK"