

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6038 of 2016
Date of decision:28.11.2016

Kishore Sareen

... Petitioner

Vs.

Vijay Kumari and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikram Anand, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner/defendant No.4 in civil suit titled as Vijay Kumari vs. Varinder Sareen (Annexure P-2) is aggrieved of the impugned order dated 21.10.2015 (Annexure P-6), whereby, an application under Section 10 CPC for staying the proceedings of the suit, has been dismissed.

Mr. Vikram Anand, learned counsel for petitioner/defendant No.4 submits that prior to filing of the suit (Annexure P-2), the petitioner had filed a civil suit titled as Kishore Sareen vs. Asha Sareen and others seeking declaration to the effect that plaintiff is exclusive owner in possession of the property bearing No.B-11/2481 to the extent of ½ share by virtue of the oral family settlement on the basis of the Will dated 12.01.2007 executed by Smt. Janak Dulari and the sale deed dated 15.06.2010 executed by defendants No.1 to 6 in favour of defendant No.7 in respect of 25% share in the aforesaid property being illegal, whereas, second suit has been filed for partition at the instance of one of the co-owners seeking 1/4th share. The

sale deed has been challenged on the premise that defendants No.1 to 6 would not have sold share in favour of defendant No.7 as Janak Dulari had bequeathed the entire property by virtue of Will dated 12.01.2007 and therefore, in case, first suit succeeds, second suit would pale into insignificance. He further submits that first suit (Annexure P-1) was filed on 18.09.2010 in which issues have not been framed, whereas, second suit (Annexure P-2) filed on 28.09.2012, issues have been framed. He further submits that in order to avoid multifariousness, much less two different verdicts, second suit is liable to be stayed.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that there is no need of pondering upon the provisions of Section 10 CPC as the issues in the first suit have not been framed and the application for amendment of the plaint is stated to be pending has been moved, whereas, in second suit issues have been framed. Even otherwise, the relief in two suits is totally different and the issues cannot be said to be directly and substantially the same. At the best, both the suits can be tried together by the same Court in order to avoid the conflict of the judgment without consolidation or clubbing. The order under challenge is therefore modified and I deem it appropriate that instead of staying the proceedings of the second suit bearing No.55274 of 2013 titled as Vijay Kumari vs. Varinder Sareen and others, the same is ordered to be transferred to the Court where the first suit titled as Kishore Sareen vs. Asha Sareen and others, is pending and the trial Court shall decide both the suits together.

Revision petition stands disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

November 28, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No