

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

**CR No.6493 of 2016 (O&M)
Decided on: 21.10.2016**

Om Parkash

....Petitioner

Versus

Rajesh Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Deepak Girotra, Advocate
for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 29.08.2016 (Annexure P-5) passed by the Civil Judge (Jr. Division) Rohtak, whereby application (Annexure P-3) for stay of the suit titled '*Rajesh Kumar Bareja vs Om Parkash Bareja and others*' has been dismissed.

Counsel for the petitioner contends that Om Parkash Bareja father of Rajesh Kumar Bareja has filed a suit for declaration with consequential relief of permanent injunction in respect of House No.883/25 and 844/2 by giving challenge to the transfer deeds dated 19.06.2015 in respect of the aforesaid property purported to be executed by the petitioner in favour of Rajesh Kumar and Surender Kumar, respectively. It is further submitted that in the said suit, petitioner also claimed relief of permanent injunction restraining the defendants – Rajesh Kumar and Surender Kumar from dispossessing him. Subsequent thereto, Rajesh Kumar filed a suit for permanent injunction and mandatory injunction in respect of the aforesaid property bearing No.883/25 seeking injunction against the defendants not to

interfere in his peaceful possession and further not to dispossess him except in due course of law. It is vehemently argued that as the issue with regard to ownership of house No.883/25 and house No.844/2 is directly and substantially in dispute in the previous suit filed by Sh. Om Parkash, the suit filed by Rajesh Kumar is liable to be stayed under Section 10 of the Code of Civil Procedure. It is further submitted that the trial Court committed a gross error rather illegality in dismissing the application filed by the petitioner.

I have heard counsel for the petitioner, perused the paperbook and the various annexures appended with the petition.

The learned trial Court dismissed the application with the observations that though subject-matter of dispute between the parties is the same but cause of action in both the suit are different. Since, cause of action in both the suit are different, matter in dispute directly and substantially involved shall also be different.

Rajesh Kumar son of Om Parkash has claimed himself to be in possession of house No.883/25 and has sought permanent injunction restraining Om Parkash and others from interfering in his peaceful possession except in due course of law. On a pointed query raised by the Court, counsel for the petitioner is not in a position to say that entitlement of Rajesh Kumar with regard to grant of injunction against his forcible dispossession can possibly be decided in the suit filed by the petitioner – Om Parkash. The mere fact that in both the suits, the property is the same and question of ownership of the property is relevant for deciding the suit filed by Om Parkash but the

question of entitlement of Rajesh Kumar to get injunction is independent of the suit filed by Sh. Om Parkash. Under these circumstances, I do not find any error much less illegality in the impugned order as would call for intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, the petitioner is left at liberty to take recourse to appropriate proceedings that both the suits are decided by the same Court either independently or by way of consolidation.

21.10.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No