

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

CR No.1675 of 2017.

Date of Decision: 06.04.2017.

Shinda

....Petitioner.

VERSUS

Sarwan Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

SNEH PRASHAR, J.

The petitioner is aggrieved by the order dated 20.01.2017 passed by learned Civil Judge (Junior Division), Hoshiarpur, vide which his application under Section 10 of the Civil Procedure Code (for short, 'the Code') for stay of the Civil Suit CIS No.215 of 2016 filed by the respondent was dismissed.

The submissions made Mr. Deepak Verma, learned counsel representing the petitioner have been heard.

Learned counsel for the petitioner argued that earlier Civil Suit No.406 dated 19.04.2007 in respect of the suit land filed by the petitioner and civil suit for declaration No.303 dated 13.11.2006 also with regard to the suit land were decided vide judgment and decree dated 31.05.2014. While suit of the petitioner was dismissed, suit filed by the respondent was partly decreed. Distorting the facts as per his convenience, the respondent

has filed a fresh suit for permanent injunction. The appeal filed by the petitioner against the decree passed in favour of the respondent is still pending before the first appellate Court and therefore, the present suit till decision of that appeal was sought to be stayed by the petitioner, but learned trial court illegally dismissed his application.

The reasons for dismissing the application given by learned trial court as recorded in Para No.3 of the order are as under:-

“I have heard ld. counsels for the parties and perused the case file with their assistance. As the perusal of the file would reveal, the plaintiff/ respondent has filed instant suit, seeking permanent injunction to restrain the defendants from interfering in blocking the passage, as detailed in the headnote of the plaint. In the suit at hand, the plaintiff has expressed apprehension about blockage of the passage, necessitating the filing of the suit at hand. Ld. counsel for the applicant has placed on record the copy of the previous suit titled Sarwan Singh versus Shinda, which apparently is a suit for declaration, wherein the present plaintiff seeks to claim ownership and possession over the enumerated land. Also, permanent injunction is sought therein to restrain the defendant from interfering in the land, which forms subject of adjudication of the said suit. However, as the comparison of the reliefs sought vide both the suits would reveal, in the previous suit, the plaintiff sought declaration about his being owner in possession and sought to restrain the defendant from interfering in the peaceful physical possession of the plaintiff in the land, which was the subject matter of the suit therein. However, in the suit at hand, the plaintiff simplister seeks a permanent injunction, to restrain the defendant from blocking the passage, stated to be leading to the land of the plaintiff. Hence, the subject matter in both the suits is not the same, even though the parties are common. Therefore, the provisions of

section 10 CPC are not attracted. Being devoid of merit, the application at hand stands dismissed.”

Learned counsel for the petitioner failed to demonstrate any illegality or perversity in the order passed by learned trial court. Admittedly, the suit for declaration filed by the respondent with regard to the land comprised in Khewat No.297, Khatoni No.470, Rect. No.20, Khasra No.3/2/1(0-2) and 4/1(0-9) was partly decreed. While the respondent was held to be owner in possession of land measuring 0K-9M comprised in Khasra No.4/1, his similar claim with regard to land measuring 0K-2M comprised in Khasra No.3/2/1 was dismissed. However, the subject matter of the instant case is the passage to the land regarding which the claim of the respondent that he is owner in possession had been accepted. It is simplicitor suit for permanent injunction seeking to restrain the petitioner from blocking the passage to the land by constructing a wall between Khasra No.3/2/1. As such, not only the subject matter of the suit but also the cause of action pleaded is distinct from the earlier suit and therefore, learned trial court has rightly dismissed the application for stay of the suit filed by the petitioner.

Thus, there being no illegality or perversity warranting interference in the order of learned trial Court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

06.04.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**