

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

Civil Revision No.236 of 2017 (O&M)

Date of Decision: 19.07.2017

Krishan Kumar

. . . Petitioner

Versus

Sarista Devi and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Bansal, Advocate
for the petitioner.

Mr. Rishabh Gupta, Advocate
for respondent No.1

Anil Kshetarpal, J. (Oral)

Defendant No.1 has filed the present revision petition under Article 227 of the Constitution, challenging the order dated 20th December 2016 (Annexure P-3) passed by Additional Civil Judge (Senior Division), Hoshiarpur, dismissing application under Section 10 CPC, refusing to stay trial of the suit.

Learned trial Court after hearing the arguments recorded the following order:-

“I have heard the arguments of learned counsel for parties and have gone through the file carefully. In the present suit, plaintiff has claimed declaration that plaintiff is

owner in possession of the suit property on the basis of sale deed 04.05.2007 and further she has claimed relief that agreement to sell dated 03.01.2006 alleged to be executed by Krishan Kumar defendant no.1 in favour of defendant no.2 is illegal, null and void and is not binding on the plaintiff's rights. There is no dispute to the fact that another suit titled as "Krishan Kumar Versus Sarishta Devi" has been filed by defendant no.1 Krishan Kumar whereby he has claimed that sale deed dated 04.05.2007 stood cancelled as Sarishta Devi did not comply with its terms. But defendant no.1 Krishan Kumar has nowhere taken preliminary objection regarding stay of the present suit u/s 10 CPC. This case has now reached at a final stage and preposterously the present application has been filed at this fag end claiming that the present is liable to stayed u/o 10 CPC whereas same could have been moved much earlier. Nor any application for consolidation of these suits has ever been filed. The basic object and predominant purpose of section 10 CPC stood defeated. The objection of stay of suit has been raised at the very belated stage which smacks of mala fide and intention to protract the present case. The entire evidence of both the parties has already been recorded. The case was at final hearing and when this case was about to culminate, the present application moved by defendant no.1. It is significant to mention here that another suit filed by the defendant no.1 was, no doubt, instituted prior to the present case but the evidence of the parties is yet to be recorded and passing of final order has been stayed by the Hon'ble High Court pursuant to revision filed by defendant no.1 against the order of this court under Order 9 Rule 13 CPC setting aside exparte judgment and decree which was earlier passed against Sarishta Devi.

Admittedly, in the present suit plaintiff Sarishta Devi has also claimed declaration to the effect that agreement to sell dated 03.01.2006 alleged to be executed by Krishan Kumar defendant No.1 in favour of defendant no.2 is illegal, null and void. So, it cannot be stayed as the subject matter in controversy between two suits is not the same. The matter in issue in this suit is not directly and substantially in issue in previously instituted suit between the plaintiff and defendant No.1. In the present suit, plaintiff has claimed that she is owner in possession of the suit property on the basis of sale deed dated 04.05.2007 executed by defendant no.1 in favour of plaintiff for a total consideration of Rs.94,000/- and the possession of the suit property was also delivered to her. On the other hand, in the suit filed by defendant no.1, he has claimed that sale deed dated 04.05.2007 stood cancelled as plaintiff Sarishta Devi did not comply with its terms. So, there is apparent difference in the cause of action as well as the relief claimed in these suits.. Above all, keeping in view the larger interest of justice, since the case has mature and is at its fag end, ends of justice would be met only by deciding this suit on merits. Compounding the above said discussion, the present application is hereby dismissed. Now to come 07.01.2007 for rebuttal evidence, if any, and for arguments.”

Counsel for the petitioner has challenged the aforesaid order on three counts; (i) the property in dispute in both the suits is the same; (ii) previous suit filed by the petitioner was decreed ex-parte on 31.8.2012 and that ex parte decree has been set aside only on 6th December, 2016, therefore, petitioner could not have filed the application under Section 10 CPC earlier; (iii) since the findings in the previous suit would operate as *res judicata*, therefore, subsequent suit cannot be allowed to proceed.

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Learned counsel for the respondent has supported the order passed by the Additional Civil Judge (Senior Division), Hoshiarpur. It has been argued that the instant suit was instituted by respondent No.1 on 04.05.2010. The ex- parte decree was passed in favour of petitioner on 31.08.2012. For a period of more than two years and three months, no application under Section 10 CPC has been filed for stay of the suit.

It has further been submitted by the counsel for the respondent that apart from the validity of the sale deed, in subsequent suit there is a dispute with regard to validity of agreement to sell dated 03.01.2006, which is not part of the instant suit (subsequent suit) from which present revision petition has come.

I have heard the learned counsel for the parties and with their help gone through the paper-book.

It is not in dispute that the present suit is at final stage. Parties have concluded their evidence. In the first suit, no doubt, ex parte decree has been set aside, but the case is still at the stage of plaintiff's evidence. Now, once the instant suit is at the fag end and fixed for arguments, in my opinion there is no justification of staying the proceedings in the present suit under Section 10 of the CPC. The object of Section 10 is to stay the proceedings right at the beginning. Once defendant-petitioner allowed the trial of suit to proceed for a period of 2 years and 3 months after its filing, it would not be possible for the Court to stay the proceedings of the suit, at this stage.

Still further it is not in dispute that validity of agreement to sell challenged in subsequent suit is not the issue in the first suit.

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Taking into consideration, facts available on record and the reasons assigned by the Additional Civil Judge (Senior Division), Hoshiarpur, I do not find any reason to interfere with the order passed by the Additional Civil Judge (Senior Division), Hoshiarpur.

Revision petition dismissed.

[ANIL KSHETARPAL]
JUDGE

19.07.2017
Sachin/seema

Whether Speaking/reasoned	:	Yes
Whether Reportable	:	Yes