

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

CR No.3503 of 2014 (O&M)

Date of decision: 08.09.2017

Paramjit Kaur and another

... Petitioners

Versus

Sukhvinder Kaur

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Munish Gupta, Advocate
for the petitioners.

Mr. Rakesh Gupta, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 03.04.2014 passed by the Additional Civil Judge (Senior Division), Garshshankar, whereby application under Section 10 of Code of Civil Procedure (in short, 'the Code') for stay of suit titled **Sukhvinder Kaur Vs. Paramjit Kaur and another**, has been declined.

Counsel for the petitioners has submitted that Paramjit Kaur was married to Balbir Singh son of Karnail Singh and out of the wedlock two daughters and one son, Amritpal Singh (petitioner No.2) was born. Relation between Paramjit Kaur and Balbir Singh became strained due to extramarital relation between Balbir Singh and Sukhvinder Kaur (respondent herein). Balbir Singh was owner of 10 Kanals 01 Marla of land out which he gave 08 Kanals land to Smt. Paramjit Kaur and in this regard,

decree dated 24.04.1995 was passed in favour of Ms. Paramjit Kaur. Paramjit Kaur is in possession of 8 Kanals of land, given to her by her husband on 26.03.1995 in respect of her claim for maintenance etc.

Paramjit Kaur filed a suit for declaration claiming co-ownership in joint possession of land measuring 8 Kanals on the basis of judgment and decree dated 24.04.1995 and challenged the gift deed dated 08.12.2010 purported to be executed by Balbir Singh (defendant No.1 therein) in favour of Sukhwinder Kaur. It is further submitted that said gift deed purported to be executed by Balbir Singh and his mother is in respect of land measuring 22 Kanals 03 Marlas but Paramjit Kaur claims right only qua 08 Kanals of land on the basis of judgment and decree dated 24.04.1995. It is further submitted that Balbir Singh (since deceased) filed the written statement contesting claim of Paramjit Kaur and, in turn, denied giving 08 Kanals of land to Paramjit Kaur as well as judgment and decree dated 24.04.1995. Balbir Singh also filed counter claim seeking setting aside of the judgment and decree dated 24.04.1995. Balbir Singh and Sukhwinder Kaur denied Paramjit Kaur to be in possession of 08 Kanals of land in question.

It has further been argued that Sukhwinder Kaur filed a suit for permanent injunction restraining Paramjit Kaur and Amritpal (petitioners herein) from interfering in lawful and peaceful joint possession of land measuring 22 Kanals 3 Marlas, detailed in the head note of the plaint (Annexure P-4). In the suit, Sukhwinder Kaur staked her claim to the said

property on the basis of gift deed dated 08.12.2010 allegedly executed by Balbir Singh and his mother in her favour. It is argued with vehemence that since the judgment and decree dated 24.04.1995 as well as gift deed dated 08.12.2010 are the subject matter of adjudication in the previously instituted suit (Annexure P-1) filed by Paramjit Kaur against Balbir Singh and Sukhwinder Kaur in which Amritpal Singh has been impleaded as one of the LRs of Balbir Singh during pendency of the suit, so matter in dispute in the previously instituted suit is directly and substantially the same as has been raised in the later suit filed by Ms. Sukhwinder Kaur, therefore, suit filed by Sukhwinder Kaur is liable to be stayed under Section 10 of the Code of Civil Procedure till decision of the suit filed by Ms. Paramjit Kaur.

Counsel representing the respondent, on the contrary, would urge that in the suit filed by Sukhwinder Kaur, land measuring 22 Kanals 03 Marals is involved whereas land involved in the suit filed by Paramjit Kaur is only 8 Kanals out of large chunk of land. Another submission made by counsel is that in the suit instituted by Paramjit Kaur, Amritpal Singh is not a party whereas Amritpal is one of the defendants in the suit instituted by Sukhwinder Kaur, therefore, parties in both the cases are not same. In addition, it is argued that as question of grant of injunction qua land measuring 22 Kanals 03 Marlas in favour of Sukhvinder Kaur can not be raised in the suit filed by Paramjit Kaur, a serious prejudice shall be caused to Sukhvinder Kaur in seeking her claim for injunction qua land measuring 22 Kanals 03 Marlas adjudicated upon, in case her suit is stayed.

I have heard counsel for the parties, perused the paper book particularly the annexures appended to the petition.

Learned trial Court has dismissed the application for stay with the following observations:-

In the civil suit filed by Paramjit Kaur, defendant No.1 the dispute is regarding land measuring 08 Kanals whereas in the present suit, the dispute is regarding 22 Kanals 03 Marals of land. So the subject matter in both the suits is different. The reliefs in both the suits are also different. No ground is made out to allow the present application and the same stands dismissed.

Perusal of the plaint (Annexure P-1) of the suit filed by Paramjit Kaur and the plaint (Annexure P-4) in respect of the suit instituted by Sukhwinder Kaur would indicate that findings recorded by the trial Court with regard to subject matter of both the suits being different, are correct to the extent that though 8 kanals of land claimed by Paramjit Kaur is the subject matter of both the suits but land exceeding 08 Kanals claimed by Sukhwinder Kaur is not the subject matter of suit instituted by Paramjit Kaur. This apart, Sukhwinder Kaur has prayed for permanent injunction in respect of land measuring 22 kanals 3 marlas and the said claim of Sukhwinder Kaur cannot be adjudicated upon in the suit filed by Paramjit Kaur. It is also a matter of record that in the previously instituted suit, Balbir Singh and Sukhwinder Kaur have been arrayed as defendants whereas in the suit filed by Sukhwinder Kaur, she has claimed injunction

not only against Smt. Paramjit Kaur but also against Amritpal. Under the circumstances, I find it difficult to accept contention of the petitioner that Section 10 of the Code of Civil Procedure is attracted in the given circumstances to stay the subsequently instituted suit for injunction by Sukhwinder Kaur.

For the foregoing reasons, I find no error much less illegality in the order impugned warranting interference. Accordingly, the petition is dismissed. However, the petitioners shall be at liberty to take recourse to appropriate remedy, in accordance with law, to seek the relief that the cases are decided by the same Court. Application, if any, filed before the competent court, in this regard, shall be decided on its merits.

08.09.2017
ashok/sd

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No