

Civil Revision No.4028 of 2017

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

Sr. No.126

Civil Revision No.4028 of 2017

DECIDED ON: June 01, 2017

JAGDEV SINGH

..PETITIONER

VERSUS

AVTAR SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Gurinderjit Singh, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of impugned order dated April 29, 2017 (Annexure P-4) passed by learned Additional Civil Judge (Sr. Divn.), Samrala, District Ludhiana, whereby an application for consolidation of both the suits titled as “*Jagdev Singh & ors. Vs. Avtar Singh*” and others bearing Civil Suit No.949/13 of May 30, 2012 with the civil suit bearing No.147 of August 13, 2006/2011 titled as “*Avtar*

Singh and others vs. Kesar Singh and ors.” has been dismissed.

2. The brief facts giving rise to the instant petition are that the respondents filed a Civil Suit bearing No.147, dated August 13, 2006/2011 praying therein partition of vacant plot and house by meets and bounds by allotting separate share to the plaintiffs of the land in suit fully detailed and described head note of the plaint as depicted in the rough site plan as well as for permanent injunction restraining the defendants or their agents, servants and attorneys from changing the nature of the specific value of the portion of the joint property or are raising some sort of construction and also restraining them from alienating, transferring or putting any charge over the joint land without getting the same partitioned, whereas the petitioner along with proforma respondents instituted a suit for declaration to the effect that they along with defendants No.6 & 7 are owners of land in suit fully detailed and described of the head note of the plaint. On the basis of the family settlement arrived at between the plaintiffs No.1 to 3 and defendants No.4 to 7 and Karnail Singh and Jang Singh sons of Ram Singh (since deceased) and for symbolic possession qua the share of defendants No.1 to 3 by way of specific performance of contract on the basis of agreement/compromise dated March 27, 2006 executed between the plaintiffs No.1 to 3 and defendants No.6 & 7 and deceased Karnail Singh and Jang Singh; or in the alternative suit for grant of mandatory injunction directing the defendants No.1 to 3 to execute and get the sale deed registered regarding the suit property in favour of plaintiffs and defendants No.6 & 7 as well as for permanent injunction restraining the defendants No.1 to 3 or their agents, servants, attorneys etc. from interfering or

dispossessing or cause to dispossess the plaintiffs and defendants No.6 & 7 from the land measuring 1K-14M i.e. disputed property illegally and forcibly.

3. During the pendency of civil suits, the petitioner moved an application seeking the consolidation of both the suits submitting that the suit property as well as the parties in both the suits are the same and in order to avoid conflicting judgments both the suits be consolidated. Moreover, learned counsel for the respondents herein also suffered a statement on April 24, 2017 that he has no objection if the application for consolidation of both the suits be allowed but despite that fact, an application has been dismissed by the learned trial court vide impugned order dated April 29, 2017, which is liable to set aside being illegal, arbitrary and suffering from material irregularities. The learned trial court has failed to appreciate that the learned counsel for the respondents has already pleaded no objection with regard to consolidation of both the suits. Moreover, it is settled principles of law that non-consolidation of both the suits is likely to lead the multiplicity of litigation, leaving the door open for conflicting decisions on the same issue by the same court, which may be common to the suits that are sought to be consolidated. Non-consolidation, therefore, is prejudice to both the parties and can result in failure of justice. Moreover, the very purpose of the consolidation of the suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar

documentary and oral evidence twice over in the two suits at two different trial.

4. To buttress his contention, learned counsel for the petitioner has placed reliance upon pronouncement made by the Hon'ble Apex Court in case "*Mahalaxmi Co-operative Housing Society Ltd. and etc. vs. Ashabhai Atmaram Patel (D) through LR. and ors.*" 2013(4) SCC 404. The very purpose of the consolidation of suits stood defeated by the dismissal of the application vide impugned order. Thus, impugned order is not sustainable in the eyes of law and deserves to be set aside.

5. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this court is of the considered view that there is no justification for causing any interference in the impugned order dated April 29, 2017 as the same is absolutely in consonance with the legal proposition as well as facts of both the suits.

6. No doubt, learned counsel for the defendant No.3 has suffered a statement on April 24, 2017 that he has no objection if the application for consolidation of both suits is allowed but the court has to see the legal complications and is not to be swayed by the statements made by the parties or their counsel. A glance at the civil suit titled as "*Avtar Singh and ors. Vs. Kesar Singh and ors.*" transpires that the said suit has been filed by Avtar Singh, Gagandeep Singh and Harpreet Singh against Kesar Singh, Netar Singh, Jaswinder Singh, Harchand Singh and Jagdev Singh seeking relief of partition by way of meets and bounds and for permanent injunction regarding property measuring 1K-14M bearing Khasra Nos.179, 105/1/1,

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108/1/1, 173 situated at Village Dhilwan, whereas the civil suit titled as “*Jagdev Singh and ors. Vs. Avtar Singh and ors*” has been filed by Jagdev Singh, Netar Singh, Harchand Singh, Rejinder Pal Singh and Harinder Pal Singh against Avtar Singh, Gagandeep Singh, Harpreet Singh, Charanjit Kaur, Kulwant Singh, Kesar Singh and Jarnail Singh seeking suit for declaration and symbolic possession and in alternative for mandatory injunction and for permanent injunction regarding the suit property measuring 1K-14M fully detailed and described above.

7. The relief(s) claimed in both the suits are different, the parties are also not the same, though the suit property in both the suits is the same and thus, the consolidation of both the suits has been rightly declined by learned trial court vide impugned order dated April 29, 2017. Thus, finding no merit in the instant petition, the same is dismissed. However, while parting with this order, the learned trial court is advised to decide both the suits simultaneously though by two different judgments to avoid any conflicting judgments.

June 01, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**