

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

CR No. 6740 of 2016

Date of Decision: 13.11.2017

SADHU RAM

-PETITIONER

VS

KRISHNA KUMARI AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Sidhu, Advocate,
for the petitioner.

Mr. Naresh Jain, Advocate,
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has assailed the order dated 31.05.2016 passed by Civil Judge (Junior Division), Malout whereby application under Section 10 CPC filed by the petitioner for stay of subsequent suit was dismissed.

[2]. Earlier vendor of the petitioner filed a suit for declaration and permanent injunction which was dismissed by the trial Court. The judgment and decree of the trial Court was upheld by the lower Appellate Court and RSA No. 6106 of 2015 is pending in the High Court. Subsequent suit has been preferred by respondents No.1 and 2 for possession by way of partition of joint land.

[3]. During course of arguments, learned counsel for the petitioner relies upon the findings recorded by the trial Court in the impugned order wherein it was recorded that the matter in issue is directly and substantially same between the parties. The question of title is yet to be decided. The appeal is continuation of the suit. In the present suit parties of the present suit are same and are claiming their right through the parties which were in the prior suit. The prayer in terms of Section 10 CPC was declined only on the premise that the earlier suit was for declaration and permanent injunction but the present suit is for specific performance.

[4]. Learned counsel submits that infact the present suit is for possession by way of partition and not for specific performance. The aforesaid factual findings recorded by the trial Court have not been disputed by learned counsel for the respondent, however, he submits that in the subsequent suit, the petitioner being defendant No.4 has not filed even written statement and issues have not been framed.

[5]. Learned counsel for respondents No.1 and 2 further submits that the findings recorded by the trial Court are on the wrong premise. He admits that infact the subsequent suit is for possession by way of partition and not for specific performance.

[6]. From the record it appears that the trial Court has

decided the application without adhering to factual matrix. The nature of land involved in the subsequent suit has to be adverted to while considering the application. Whether or not the application in question can be entertained before filing of the written statement and framing of issues would also be adverted to by the trial Court afresh.

[7]. In view of above, I deem it appropriate to set aside the impugned order and remand this case to the trial Court for fresh decision in accordance with law.

13.11.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No