

C.R. No. 7080 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 7080 of 2016 (O&M)

DATE OF DECISION:11.01.2017

Gurnam Singh

.....Petitioner

Versus

Satnam Singh Sandhu

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Tangri, Advocate
for the petitioner.

Mr. Nimanyu Gautam, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed for setting aside orders dated 27.9.2016(Annexure P-7) and 12.7.2016 (Annexure P-6) passed by Civil Judge, Jalandhar, whereby, an application filed by the petitioner-defendant under Section 10 CPC for stay of the proceedings of the suit has been dismissed.

Briefly, the facts of the case are that respondent filed a suit for permanent injunction restraining the defendant from forcibly dispossessing him out of suit property and also for restraining the petitioner from raising any construction in the portion in his possession and further restraining him from alienating the suit property. The respondent has also filed another suit against the petitioner seeking a decree of declaration.

During pendency of the suit, the petitioner moved an application under Section 10 CPC, which was dismissed vide order dated 12.7.2016 by passing the following order:-

“Heard on application under Section 10 CPC moved on behalf of defendants. The assertions of the application are that subject matter of the suit in issue is also directly and substantially in issue in a previously instituted civil proceedings between the same parties pending before the Hon'ble High Court vide RSA No. 486 of 1988. Besides this suit, other two suits relating to similar and same matters between same parties are pending in different courts at Jalandhar in the previously instituted suits and this fact has been concealed by the plaintiff. Reply to this application filed denying the assertions thereof. The case alleged by the applicant-defendant already pending having similar issue with suit in hand, plaint of said suit and proceedings have not been attached with application in hand. Thus, this application is dismissed. Now PWs be produced on 27.7.2016 for their cross-examination.”

Thereafter keeping in view the stage of the suit and the order passed on 12.7.2016, another application was moved under Section 10 CPC for stay of the proceedings, which was also dismissed vide order dated 27.9.2016 on the ground that earlier application had already been dismissed and the second application on the same assertions is not sustainable.

Orders dated 12.7.2016 and 27.9.2016 passed by the Civil Court are subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that after dismissal of earlier application on 12.7.2016, another application was moved by annexing all the documents but the same was also dismissed, whereas, earlier application was dismissed only on the ground that the copy of the plaint and proceedings of the suit already pending on the similar issue were not attached with the application.

Notice of motion was issued.

Learned counsel for the respondent has opposed the submissions made by learned counsel for the petitioner and submits that the second application moved on the same ground was not maintainable and, therefore, the same was dismissed with costs.

Heard the arguments of learned counsel for the parties and have also perused both the orders dismissing two applications of the petitioner.

A perusal of order dated 12.7.2016 would show that the application was dismissed because plaint and proceedings of the suit already pending on the similar issue were not attached along with application and nothing was said on merits. However, while filing second application, all the documents were annexed with the application but the same was also dismissed on the ground that second application on the same assertions was not maintainable. It cannot be said that earlier application was dismissed on merit and there is bar in filing the second application. The impugned order dated 27.9.2016 does not deserve to be sustained as neither the application has been dismissed on merits nor it has been mentioned as to how the second application was not maintainable when it has been moved after annexing all the documents which were not attached with the earlier application.

Accordingly by considering the submissions made by learned counsel for the petitioner as well as in the interest of justice, the present petition is partly allowed and impugned order dated 27.9.2016 is hereby set aside.

However, the civil Court is directed to reconsider the second application moved by the petitioner on merits and pass fresh order in accordance with law.

January 11, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No