

CR No. 8722 of 2015 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 8722 of 2015 (O&M)

Date of decision: 2.5.2017

Pritam Singh

...Petitioner

Versus

Jasmail Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sarwinder Goyal, Advocate
for the petitioner.

Mr. Harsh Goyal, Advocate and
Mr. Tribhawan Singla, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 7.10.2015 passed by the learned trial court, dismissing the application of defendant-petitioner under Section 10 of the Code of Civil Procedure ('CPC' for short), he has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this court that petitioner has filed civil suit No. 453/27.9.2012 for possession by way of specific performance of the agreement to sell dated 5.8.1998. Thereafter, respondent purchased suit property vide sale deed dated 137 dated 23.4.2013 and on the basis thereof, filed a suit for declaration to the effect that she was owner in

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possession of the suit property and was also entitled for attestation of mutation in her name. It is also pertinent to note here that before filing suit for declaration by the respondent, petitioner had already moved an application under Order 1 Rule 10 CPC, which was allowed and respondent Smt. Jasmail Kaur was impleaded as party-defendant in the suit for possession by way of specific performance filed by the petitioner. Prayer made by the petitioner in the application under Order 6 Rule 17 CPC was also accepted, permitting him to amend the prayer clause of his plaint challenging the validity of abovesaid sale deed No. 137 dated 23.4.2013.

Learned counsel for the petitioner has also rightly pointed out that prior to filing the suit for declaration, order dated 27.9.2012 (Annexure P-5) had already been passed by the learned trial court in the application of the petitioner under Order 39 Rules 1 and 2 CPC. Faced with the abovesaid fact situation, petitioner-defendant moved an application under Section 10 CPC for staying subsequent suit for declaration filed by the respondent. It was this application which was dismissed by the learned trial court.

A bare perusal of the impugned order would make it crystal clear that the learned trial court failed to appreciate the abovesaid factual as well as legal aspects of the matter, while passing the impugned order, because of which it cannot be sustained. Once the suit property is the same and it has also gone undisputed before this Court that agreement to sell in favour of petitioner was prior in time, suit of the petitioner for possession by way of specific performance of agreement to sell dated 5.8.1998 has to be decided first. Suit for declaration filed by the respondent is liable to be stayed, till the decision of the suit filed by the petitioner. It is so said, because clubbing of both these suits is not feasible, because the petitioner

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being plaintiff in a suit for possession by way of specific performance has already concluded his evidence and suit of the plaintiff is at the stage of defendant evidence. If both the suits are ordered to be clubbed, at this stage, it would amount to *de novo* trial, which will serve no purpose. In this view of the matter, it can be safely concluded that the impugned order cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained.

Accordingly, impugned order dated 7.10.2015 passed by the learned trial court is hereby set aside. Application moved by the defendant-petitioner under Section 10 CPC would stand allowed and suit for declaration filed by the respondent, which was admittedly filed at a later point of time, shall remain stayed till the final decision of the suit for possession by way of specific performance filed by the petitioner.

Resultantly, with the abovesaid observations made, instant revision petition stands allowed, however, with no order as to costs.

2.5.2017

AK Sharma

(RAMESHWAR SINGH MALIK)

JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No