

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.1777 of 2016

.....

Date of decision:16.5.2018

Raj Kumar and others

.....Petitioners

v.

Yogesh Kumar and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Satish Chaudhary, Advocate for the petitioners.

Mr. G.C. Shahpuri, Advocate for the respondents.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 20.2.2016 (Annexure-P.3) passed by the learned Civil Judge (Junior Division), Jagadhri, vide which the application filed by the petitioners under Section 10 CPC for staying the suit filed by the contesting respondents/ plaintiffs has been dismissed.

Notice of motion has been issued in this case.

Mr. G.C. Shahpuri, learned Advocate has put in appearance on behalf of the respondents and contested this civil revision petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that during the pendency of the proceedings, an application under Section 10 CPC for stay of suit had been

filed by defendants No.1 to 3 (respondents No.1 to 3 herein). It had been alleged by the applicants-defendants No.1 to 3 that Chet Ram, who was owner of land measuring 16 Kanals situated at Damla expired in March 2002. A dispute arose after his death regarding his estate as present plaintiffs started claiming rights on the basis of Will dated 3.12.2001 alleged to have been executed by Chet Ram whereas natural heirs claiming rights on the basis of natural succession. One Civil Suit No.65 of 2002 was instituted by present applicants-defendants No.1 to 3 on 29.4.2002 claiming ownership of the estate of Chet Ram. The present plaintiffs (who were defendants No.6 and 7 in that suit) filed written statement raising the plea that they are entitled to succeed to the estate of Chet Ram on the basis of Will dated 3.12.2001. That suit was dismissed vide judgment and decree dated 4.6.2011. Then in the appeal, the case was remanded back and later on again the suit was decided by the Court and it was held specifically that the Will is not proved and suit was decreed. Now the appeal is pending for adjudication against that decree. It has been further stated that in this case, the plaintiffs had raised the plea that they are owners of the suit property i.e. the estate of Chet Ram on the basis of Will dated 3.12.2001 and now the plaintiffs want to prove that Will by adducing evidence. In both the cases, the parties are same, land involved is same and issue involved is same and hence, the second suit cannot proceed with till final disposal of previously instituted suit and the prayer was made under Section 10 CPC for staying the proceedings.

The learned Civil Judge (Junior Division), Jagadhri, vide impugned order dated 20.2.2016 dismissed the application by stating that

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the earlier application under Section 10 CPC filed by the defendants being devoid of merit, which has been dismissed having become infructuous, therefore, that order has become final and second application is not maintainable.

From the perusal of the record and after hearing learned counsel for the parties, I find that in both the cases the main issue is regarding the execution of the Will dated 3.12.2001. If the Will is proved, then the succession to the estate of Chet Ram is to be devolved as per the Will. If the Court says that the Will is not validly executed or not proved, then the estate is to be inherited by the natural heirs as per law. In the previously instituted suit admittedly that issue was there and that suit had been decided and appeal is pending. The appeal is continuation of the suit. Section 10 CPC provides as under:-

“10. Stay of suit:- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation:- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on

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the same cause of action.”

The present suit in hand is also on the same point regarding the execution of the Will between the same parties, regarding the same land and the issues involved are same. The parties cannot be held as different as in one suit father was there and now the sons are there. If this suit is not stayed, there may be chance of contradictory judgments qua the same matter i.e. regarding the Will. To avoid the contradictory decisions in such type of cases, the provisions of Section 10 CPC are there.

The earlier application has been dismissed as having become infructuous as at that time civil suit was decided but the matter was again remanded back to the lower Court and it was pending before the Civil Judge (Junior Division) and then it was again decided and now the appeal is pending. Therefore, in no way, now it can be held that the suit cannot be stayed under Section 10 CPC as earlier application has been dismissed after having become infructuous after the dismissal of the suit at that time.

In view of the above facts and circumstances, I find that the impugned order dated 20.2.2016 passed by the learned Civil Judge (Junior Division), Jagadhri, is not as per law and the same is set aside being against the spirit of Section 10 CPC.

Hence, finding merit in the present civil revision petition, the same is allowed and the second suit is stayed till the previously instituted suit is finally decided by the appellate Courts.

May 16, 2018.

(Inderjit Singh)
Judge

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NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No