

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2645 of 2016

Date of Decision:21.11.2018

Shekhar Jain

...Petitioner

Vs.

Shanta Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Rajesh Sethi, Advocate
for the petitioner.

Mr. B. S. Rana, Senior Advocate, with
Mr. Gagandeep Rana, Advocate,
for respondent no.1.

Amol Rattan Singh, J.

By this petition, the petitioner seeks the setting aside of the impugned order dated 21.03.2016 passed by the learned Civil Judge (Junior Division), Ambala, by which his application filed under Section 10 of the Code of Civil Procedure (hereinafter to be referred to as the Code) , seeking a stay of proceedings in Civil Suit bearing O.S. No.23 of 2013 (instituted by both the respondents herein against the petitioner), pending before that Court, has been dismissed.

2. Briefly, the facts are that on 16.09.2013 the petitioner herein had instituted a suit bearing O.S. No.191 of 2013, titled as Shekhar Jain v. Shanta Jain and others, in the Court of the learned Civil Judge (Senior Division), Meerut (U.P.), seeking therein the grant of a decree of partition and possession of a 1/4th share that the petitioner claimed to be his, in the estate of his late father Shri Parkash Chand Jain, the suit property in that suit being:-

- (i) a shop and a house situated in Tarni Street, Town and Post office Sardhana, Tehsil Sardhana, District Meerut;

- (ii) a vacant plot measuring approximately 500 sq. yards situated at Raja Park, Mahesh Nagar, Ambala Cantonment;
- (iii) a double storied house bearing no.4176, 4177, 4178 and 4179/1-A, situated at D.C. Road, Ambala Cantonment;
- (iv) one double storied house bearing no.01 and 02, Arya Nagar, Ambala Cantonment;
- (v) shop no.5309/2, situated near B.D. School, Grain Market, Ambala Cantonment; and
- (vi) vacant land beneath demolished shops no.5488 and 5489, situated in the Grain Market, B.D. School, Ambala Cantonment.

Thus, actually the majority of the suit property as is subject matter of the suit at Meerut (seeking partition), is in Ambala Cantt., with only one property, i.e. a shop and an *Ahata*, situated in District Meerut.

The defendants in the suit instituted by the petition at Meerut, are respondents no.1 and 2 herein, i.e. the mother and brother of the petitioner, as also another brother, Raj Kumar Jain.

3. That suit has been instituted for whatever reason at Meerut, even though the petitioner, as per the copy of his plaint in that suit (Annexure P-1 with this petition), is seen to be residing in Ambala Cantt.

The impugned order shows that the court at Meerut took cognizance of the suit on 16.02.2013 (shown to be 16.07.2013 by a typographical error in the impugned order as per learned counsel for the parties), and had issued summons to the defendants therein.

Summons had been issued to the defendants therein returnable on 11.03.2013, for filing written statements, after which the suit (at Meerut) is stated to have been fixed for framing of issues for 12.04.2013.

4. On 30.04.2013 the suit out of which the present petition arises, i.e. C.S. no.23 of 30.04.2013/01.07.2013, was instituted by the respondents

herein (the other brother, Raj Kumar Jain, not being a party to the 'instant suit'), in which the petitioner is the sole defendant.

5. By this suit, a decree of mandatory injunction is sought by the respondent-plaintiffs, directing thereby the petitioner to vacate the suit property and hand over its possession, the said property shown to be consisting of 2 rooms and one kitchen on the first floor of the property numbered as 4178 at D.C. Road, Ambala Cantt.; as also a property numbered as 4179/1-A, also situate at D.C. Road, Ambala Cantt., consisting of two rooms, one bathroom, one toilet and open passage on the first floor thereof.

It is important to notice here itself that the mandatory injunction sought by the respondents herein is on the basis of an oral family settlement contended to have been arrived at on 20.12.1998 between the parties.

The petitioners' claim on the other hand, as regards the partition of the entire estate of the late Shri Parkash Chand Jain, is contended to be also on the basis of an oral family partition, stated to have taken place in the year 2006, upon the death of Shri Kailash Chand Jain, a brother of the petitioners' father, Parkash Chand Jain.

6. The learned trial Court (at Ambala) duly noticed the fact that the suit at Meerut had been instituted prior in time to the one at Ambala, but eventually went on to hold, after noticing Section 10 of the Code, that both the suits not being the same in nature, the Court at Ambala was not bound to stay its hands in proceeding further with the matter, especially as transfer applications filed by both the parties before the Supreme Court, had been dismissed on 18.03.2015 (vide an order, a copy of which has been annexed as Annexure P-5 with the present petition). Vide those applications the petitioner had sought transfer of the suit pending at Ambala to Meerut

whereas the respondents had sought transfer of the suit pending at Meerut to Ambala.

Hence, citing the aforesaid two reasons, the application of the petitioner, under Section 10 of the Code, was dismissed by the court at Ambala, leading to the filing of the present revision petition before this Court.

7. Notice having been issued in the petition on April 12, 2016, proceedings had not been stayed at that stage but subsequently on an application (CM no.24272-CII-2017) having been filed by the petitioner, seeking stay of such proceedings, eventually on 17.09.2018, as the suit was stated to be at the stage of closure of the evidence of the plaintiffs, the trial Court had been directed by this Court to stay its hands in passing the final order.

8. At the time of final arguments, Mr. Sethi, learned counsel for the petitioner, had submitted that as regards the dismissal of the transfer applications by the Supreme Court, the issue on staying proceedings at the Court at Ambala, in terms of Section 10 of the Code, had not been touched upon and consequently, that ground has been wholly taken erroneously by the trial Court to dismiss the petitioners' application.

He next submitted that the suit at Meerut having admittedly been instituted prior to the one filed at Ambala, with the subject matter of that suit being partition of the entire estate of the father of the parties (husband of respondent no.1 herein), the fact that the major part of the estate was at Ambala, would not affect the applicability of Section 10.

In support of his contentions, Mr. Sethi relied upon various judgments, of the Supreme Court and of this Court, as follows:-

- (i) **Aspi Jal and another v. Khushroo Rustom Dadyburjor**
AIR 2013 SC 1712;

- (ii) M/s Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care Pvt. Ltd. (2004) 6 SCC 756;
- (iii) Indian Bank v. Maharashtra State Co-operative Marketing Federation Ltd. AIR 1998 SC 1952;
- (iv) Hope Plantations Ltd. v. Taluk Land Board, Peermade (1995) 5 SCC 590;
- (v) National Institute of Mental Health & Neuro Sciences V.C. Parameshwara (2005) 2 SCC 256;
- (vi) Subho Ram v. Dharmeswar Das AIR 1987 Gauhati 73;
- (vii) Ram Kanwar v. Partap Singh 1986 PLJ 296;
- (viii) Jagan Nath Jagdish Lal v. Piara Mal Gobind Ram Sachdev 1979 PLJ 231;
- (ix) Raj Spinning Mills v. A.G. King Ltd. AIR 1954 Punjab 113; and
- (x) Jai Hind Iron Mart v. Tulsirarr Bhagwandas AIR 1953 Bombay 117.

9. *Per contra*, Mr. B. S. Rana, learned senior counsel appearing for respondent no.1, submitted that the property at Meerut being only a plot of 250 sq. yards, whereas the rest of the estate of Parkash Chand Jain, (being almost the entire chunk of the full estate), which includes the property as is subject matter of the suit out of which the present petition arises, is at Ambala, even the suit seeking partition should have been instituted by the petitioner at Ambala, where he is also residing.

Mr. Rana next submitted that in fact for Section 10 of the Code to apply, the entire subject matter of the two suits must be the same and since the suit at Meerut seeks partition of the entire estate of the late Shri Parkash Chand Jain, whereas the suit at Ambala simply seeks a decree of mandatory injunction requiring the petitioner to vacate a particular part of a building at Ambala Cantt., the suit at Ambala cannot be stayed simply because of the

pendency of the one at Meerut.

In support of the aforesaid argument, Mr. Rana first relied upon one part of the same judgment as has been relied upon by Mr. Sethi, learned counsel for the petitioner, i.e. in *Aspi Jals'* case (supra), with Mr. Rana further relying upon a judgment of a co-ordinate Bench of this Court in **Surjan v. Jangli Ram** 2002 (2) RCR (Civil) 198.

In that case, this Court had held that even where the parties to the suit are the same, and even if the property that is the subject matter of the suit is the same, that alone would not be sufficient reason to entertain an application under Section 10 of the Code.

Essentially, the ratio of that judgment is to the effect that where the reliefs sought in the two suits are different, Section 10 would have no applicability.

10. Lastly, Mr. Rana submitted that even the parties to the two suits are not 'entirely the same', Raj Kumar Jain not being either a plaintiff or a defendant in the suit at Ambala, whereas he is defendant no.3 in the suit instituted by the petitioner at Meerut. Hence, as per learned senior counsel, Section 10 cannot apply even on that count.

11. In rebuttal, Mr. Sethi, learned counsel for the petitioner, submitted that as regards the case of *Aspi Jal*, the “aspect” relied upon by Mr. Rana from that case, does not apply to the present situation, because in the case before the Supreme Court, it was a suit seeking specific performance of an agreement that was time bound, that not being the case at all presently.

Hence, he contended that both, on account of the specific mandate of Section 10, as also in order to give effect to the spirit of the principle contained therein, i.e. multiple litigation before different courts

12. Having considered the rival contentions, first of all, it is essential to refer to the necessary provisions from the Code of Civil Procedure, i.e. Sections 9, 10, 16 and 17 thereof, which are reproduced hereinunder:-

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].

16. Suits to be instituted where subject-matter situate.-
Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,
(f) for the recovery of movable property actually under
distrain or attachment,
shall be instituted in the court within the local limits of whose
jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or
compensation for wrong to, immovable property held by or on
behalf of the defendant may, where the relief sought can be
entirely obtained through his personal obedience, be instituted
either in the Court within the local limits of whose jurisdiction
the property is situate, or in the Court within the local limits of
whose jurisdiction the defendant actually and voluntarily resides,
or carries on business, or personally works for gain.

**17. Suits for immovable property situated within the
jurisdiction of different Courts.-** Where a suit is to obtain relief
respecting, or compensation for wrong to, immovable property
situate within the jurisdiction of different Courts, the suit may be
instituted in any Court within the local limits of whose
jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter
of the suit, entire claim is cognizable by such Court.

13. Thus, as per Section 9 of the Code, all civil suits are to be tried
by civil Courts, unless there is an express or implied bar contained in any
provision/any statute, ousting the jurisdiction of the civil Court.

No such bar is existent, on entertainment of suits of the kind
involved in the present case, even as per the case of the parties, the only issue
being as to whether both the cases at Ambala and Meerut can proceed
simultaneously.

Section 10, the applicability of which is essentially the bone of
contention, of course very clearly stipulates that no Court shall proceed with
the trial of any suit, the subject matter of which is also directly and

substantially in issue in a suit already instituted earlier, either between the same parties, or between the parties under whom they or any of them claim, litigating under the same title.

Section 16 stipulates that a suit must be instituted where the subject matter thereof is situate, especially in the case of an immovable property; but wherein a suit seeking to obtain any relief in respect of a wrong done to such property held by defendant, can be obtained even through the personal obedience of the defendant, such suit can be instituted either in the Court that has jurisdiction over the area in which the property is situate, or over the area in which the defendant resides or carries his own business etc.

The aforesaid general principle is qualified by Section 17, which postulates that where immovable property as is subject matter of a suit, is situated within the local limits of jurisdiction of different Courts, a suit seeking relief qua such property can be instituted in either Court as has jurisdiction over any part of the property, the only limitation to that provision being that the suit so instituted is before the Court that has pecuniary jurisdiction to take cognizance as regards the value of the entire property, no matter where situate.

14. Coming then to the issue at hand; i.e. whether the subject matter of the two suits in question presently, is the same or is wholly different, so as to oust application of the provisions of Section 10 of the Code, or not.

Undoubtedly, whereas the suit at Meerut seeks partition of the entire estate of the immediate predecessor of the parties, i.e. Shri Parkash Chand Jain, including the shop and house at Meerut, as also all the properties at Ambala, the suit at Ambala is restricted to the respondents herein seeking possession of one of the properties as is subject matter of the suit at Meerut,

i.e. certain portions of the first floor of the house bearing no.4178 and certain portions of the first floor of the house bearing no.4179/1-A. Learned counsel for the parties are not at variance to state that as a matter of fact, it is virtually a single unit house, though comprising of four municipal serial numbers given to it.

15. The question then is, would Section 10 have any application, even in terms of the judgment of this Court in *Surjans'* case (supra), cited by learned senior counsel for the respondent?

In that case, the respondents before this Court (Jangli Ram and others), were plaintiffs in a suit seeking a declaration that they were owners in possession of a half share in land measuring 44 kanals and 9 marlas, with the petitioners before this Court having contended that they had already filed a suit qua the same property, seeking a decree of permanent injunction against the prospective vendees (defendants in that suit), restraining them from interfering in their possession of the suit land.

This Court had held that Section 10 would have no application in such a case, the reason given therein being that in fact one of the parties to the suit had challenged a mutation entry, with one of the grounds of such challenge being that such a suit challenging a mutation was not maintainable, as earlier a writ petition had been filed before this Court on the same cause of action, (as contended).

Though liberty had been granted by this Court, while dismissing the writ petition, to the petitioners therein to file a civil suit in terms of Section 45 of the Punjab Land Revenue Act, 1887, however, the contention of the respondents before this Court was that the said writ petition was decided on 20.03.1996, whereas a civil suit in respect of revenue entries had already

been decreed on 08.04.1992.

In my opinion, on facts alone that case therefore has no application to the case in hand.

16. Going therefore on to judgment of the Supreme Court relied upon by Mr. Sethi, learned counsel for the petitioner, in *M/s Gupte Cardiac Care Centre and Hospitals'* case (supra).

The petitioners before the Supreme Court (those also being transfer applications), had filed suits at Nashik and Delhi, with the suit at Nashik instituted on 20.12.2001, and that at Delhi, by the opposite party, on 10.01.2002.

Vide the suit filed at Nashik, recovery of Rs.28,35,000/- from the defendants therein was sought, on account of what was stated to be a faulty heart-lung machine delivered by them to the plaintiff; whereas the suit at Delhi was instituted for recovery of Rs.20,00,000/- against the defendant (plaintiff at Nashik), on the ground that the said amount was outstanding by way of balance price of the said machine, and the interest thereon.

It was not disputed before the Supreme Court that the two suits actually arose out of the same transaction.

While exercising jurisdiction under Section 25 of the Code, one of the transfer applications was allowed, transferring the suit from the High Court of Delhi (civil original jurisdiction) to the Court of the Civil Judge at Nashik. Their Lordships also observed as follows:-

“The suit at Nashik has been instituted first in point of time. By reference to Section 10 CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed.”

The Court at Nashik was however, directed to have “regard to and respect for the rule enacted in Section 10 of the Code”.

Thus, Section 10 was held to be applicable where the subject matter of the suit was the same, between the same parties.

17. In *Aspi Jals'* case (supra) a part of which relied upon by learned counsel on both sides, the petitioners before the Supreme Court had filed a suit bearing no.1103/1976 of 2004 on 06.11.2004 for eviction of the respondent-defendant from the suit premises, on the ground of bonafide requirement for self occupation of the suit premises, with the petitioners themselves thereafter having instituted suit no.1104/1977 of 2004 also on the same day, in the same Court, for eviction of the defendant on the ground of non-user of the suit premises.

The plaintiffs thereafter filed yet another suit on February 22, 2010, seeking eviction of the defendant again on the ground of non-user (with different periods mentioned as regards the non-user in the two suits instituted on that ground).

While considering the matter, their Lordships first observed as follows:-

“11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in a previously instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in the affirmative, the subsequent suit is not fit to be stayed.

However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

It was immediately thereafter observed as follows:-

“12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case. Reference in this connection can be made to a decision of this Court in *Dunlop India Limited v. A.A. Rahna & Anr.* 2011 (1) RCR (Rent) 354 : 2011(3) Recent Apex Judgments (R.A.J.) 104 : (2011) 5 SCC 778 in which it has been held as follows:

“35. The arguments of Shri Nariman that the second set of rent control petitions should have been dismissed as barred by res judicata because the issue raised therein was

directly and substantially similar to the one raised in the first set of rent control petitions does not merit acceptance for the simple reason that while in the first set of petitions, the respondents had sought eviction on the ground that the appellant had ceased to occupy the premises from June 1998, in the second set of petitions, the period of non-occupation commenced from September 2001 and continued till the filing of the eviction petitions. That apart, the evidence produced in the first set of petitions was not found acceptable by the appellate authority because till 2-8-1999, the premises were found kept open and alive for operation. The appellate authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the second round, the appellant did not adduce any evidence worth the name to show that the premises were kept open or used from September 2001 onwards. The Rent Controller took cognizance of the notice fixed on the front shutter of the building by A.K. Agarwal on 1-10-2001 that the Company is a sick industrial company under the 1985 Act and operation has been suspended with effect from 1-10-2001; that no activity had been done in the premises with effect from 1-10-2001 and no evidence was produced to show attendance of the staff, payment of salary to the employees, payment of electricity bills from September 2001 or that any commercial transaction was done from the suit premises. It is, thus, evident that even though the ground of eviction in the two sets of petitions was similar, the same were based on different causes. Therefore, the evidence produced by the parties in the second round was rightly treated as sufficient by the Rent Control Court and the appellate authority for recording a finding that the appellant had ceased to occupy the suit premises continuously for six months without any reasonable cause.”

Having observed as above, eventually their Lordships thus came to the conclusion that Section 10 of the Code was not attracted in the facts and circumstances of that case.

18. Thus in that case, the suits filed all sought eviction of the tenant, on different grounds made out for such eviction in each case, in one it being for personal use and in the other two cases though the ground was non-user of the suit premises, the period of such non-user was different, on the basis of each of which eviction was sought.

Hence, though the relief sought in each case was the same, i.e. the eviction of the tenant, however each of the suits gave an independent cause of action for seeking such eviction and therefore could be decided independently on the basis of evidence led in each case.

19. In fact, Mr. Sethi, learned counsel for the petitioner before this Court, has relied upon the observation made in paragraph 11 of that judgment, whereas Mr. Rana, learned senior counsel appearing for the respondents, has relied upon the observations made in paragraph 12.

The question before this Court now is as to whether, when admittedly one of the parties in the suit at Meerut, i.e. Raj Kumar Jain, is not a party to the suit filed by the respondents herein at Ambala, and secondly, whereas the subject matter of the suit at Ambala is only one of the 6 properties as is subject matter of the suit at Meerut, with the relief sought qua the property at Ambala also not being the same as is sought by the petitioner herein in his suit at Meerut, would Section 10 of the Code have any application, with therefore the trial of the suit admittedly instituted later at Ambala, to be stayed till the outcome of the suit at Meerut, or whether the suit at Ambala should be allowed to proceed.

20. In my opinion, though the suit at Ambala seeks a decree of mandatory injunction directing the petitioner herein to vacate the suit premises (comprised in the first floor of the house bearing nos.4178 and 4179/1-A, D.C. Road, Ambala Cantt.), such relief being sought on the basis of an oral agreement contended to have been entered into in 1998, with the suit at Meerut being one encompassing not just that property at Ambala but also other property at Ambala, as also the property at Meerut, (seeking a complete partition thereof, as per the shares of all legal heirs of late Parkash Chand Jain, including the present respondents, i.e. the plaintiffs in the suit at at Ambala, with the said partition and shares claimed on the basis of an agreement contended to have been entered into between the same parties, i.e. the whole family, in 2006), the suit at Meerut would need to be decided first, not just because it was instituted prior in time, but also because the agreement relied upon at Meerut (correctly or otherwise, which has to be determined by the Court at Meerut), being one contended to be at a later point of time, i.e. in 2006, which possibly (depending naturally upon evidence led by both parties before the Court), would seem to override the earlier agreement contended by the respondents herein to have been entered into in 1998.

Thus, if the averments of the petitioner herein are found to be proved, also qua the property as is subject matter of the suit at Ambala, no mandate may be issuable to him to vacate the premises.

On the other hand, if the petitioner is unable to prove his case, either on the basis of the agreement in 2006, or on any other basis, qua the estate of Shri Parkash Chand Jain (as is subject matter of the suit at Meerut), or that at least the property as was subject matter at Ambala, was also to be partitioned equally between the parties, then the suit at Ambala can proceed

thereafter, on the basis of evidence led before that Court, qua that limited property.

If both the suits are allowed to proceed simultaneously, it may lead to a completely anomalous situation, where though the agreement of 1998 is proved, but the petitioner is unable to convince the Court at Ambala of the agreement of 2006, with the Court at Meerut possibly convinced on the basis of evidence led before it as regards that agreement (and any other ground for equal partition of the property), it may lead to contradictory decrees being passed, defeating the purpose of Section 10, which is to avoid multiple litigation qua the same property.

21. Though of course the matter can be looked at from the converse side also, that if the respondents herein are able to prove that an oral agreement was actually entered into in 1998 qua the property that is subject matter of the suit at Ambala, with the petitioner herein unable to prove that the said property was subject matter of any other subsequent agreement, (or the respondents herein on any other ground are able to prove that they deserve the decree prayed for), then the suit property at Ambala could cease to be part of the suit property at Meerut, even in terms of Section 11 of the Code, i.e. on the principle of *res judicata*, if the suit at Ambala is decided first.

Obviously, if the suit at Meerut is decided before, the same principle would also apply to the suit at Ambala.

However, that would actually mean proceeding with both the suits, in one of which (at Ambala), the subject matter of the suit property is a part of the subject matter of the suit property at Meerut, and though the relief claimed at Ambala may be, in form, different to the one claimed by the petitioner herein at Meerut, yet, the basis of the claim of either party, would

be whether or not they can prove either of the family agreements on the basis of which they claim the estate of the late Parkash Chand Jain.

Thus, in that essential respect, the relief claimed, as also the subject matter of the suit at Ambala, would fall within the subject matter of the suit instituted first at Meerut, by the petitioner herein.

Hence, in the opinion of this Court, Section 10 would need to be applied to the suit subsequently instituted by the respondents herein, at Ambala.

22. As regards the dismissal of the transfer applications (bearing nos.728 of 2013 and 1883 of 2013), filed by the two parties before the Supreme Court, the order of the Supreme Court dated 18.03.2015 has been annexed as Annexure P-5 with this petition and reads as follows:-

“These Transfer Petitions are filed under Section 25 of the Code of Civil Procedure, 1908 seeking transfer of C.S. (O.S) No.191 of 2013 pending before the Civil Judge, Senior Division, Meerut, Uttar Pradesh to the Court of Civil Judge, Senior Division, Ambala and Civil Suit No.23 of 2013 pending in the Court of Civil Judge, Junior Division, Ambala, Haryana to the Court of Civil Judge, Senior Division Meerut, Uttar Pradesh.

2. We have heard learned counsel for the parties to the *lis*.

3. Having perused the records and in view of the peculiar facts and circumstances of the case, we are of the opinion that the Transfer Petitions being devoid of any merit, deserve to be dismissed and are dismissed accordingly.”

Hence, very obviously Section 10 of the Code was not an issue raised before the Supreme Court and no copy of the applications filed by either side, have been referred to before this Court in any manner, to show that the aforesaid order of the Supreme Court would be deemed to cover any contention raised before that Court, as regards the said provision.

Consequently, that reason given by the trial Court at Ambala, to dismiss the suit, is also seen to be unfounded.

23. Hence, this petition is allowed, with the impugned order set aside and the learned trial Court at Ambala directed to stay its hands in adjudicating upon Civil Suit no.23/30.04.2013/01/07/2013 pending before it, instituted against the petitioner, till the decision of the civil suit filed by the petitioner against the respondents herein (and Raj Kumar Jain) at Meerut, i.e. Civil Suit no.191 of 2013.

There shall be, however, no order as to costs.

November 21, 2018
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(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes