

CR-2738-2018 (O&M)

219

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

CR-2738-2018 (O&M)

Date of decision : 14.12.2018

Gurvinder Singh @ Aman

... Petitioner

Versus

Phoolwati and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Jindal, Advocate
for the petitioner.

Mr. Rajesh Arora, Advocate
for the respondents.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order, whereby the application under Section 10 CPC submitted by the petitioner-defendant (Annexure P-3) in the civil suit seeking mandatory injunction, has been dismissed.

Learned counsel for the petitioner-defendant submitted that prior to the filing of the suit for mandatory injunction (Annexure P-2), the respondents-plaintiffs instituted a suit for partition and injunction (Annexure P-1), which is pending adjudication. The matter in issue is directly and substantially the same, thus, the suit was liable to be stayed, thus, the impugned order, under challenge suffers from infirmity and illegality.

Learned counsel for the respondents-plaintiffs submitted that

CR-2738-2018 (O&M)

the provisions of Section 10 of the Code of Civil Procedure are not attractive as prayers in both the suits are opposite to each other and had no connection, much less, the issues are also not the same.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jindal.

It would be apt to reproduce the prayer clause para in the both the suits, which reads thus:-

"Prayer in the first suit (Annexure P-2)

Thus, in view of the above facts and circumstances the plaintiffs prays that a decree for mandatory injunction directing the defendant No.1 not to collect the rent and further not to interfere in the tenancy of the tenants, with consequential relief of permanent injunction restraining the defendant No.1 interfering in collection of rent from the tenants and from forcibly evicting the tenants from the tenanted premises detailed in para No.2 of the plaint above, may kindly be passed in favour of the plaintiffs against the defendants with costs of this suit.

Any other relief which this Hon'ble Court deems fit & proper may also be granted in favour of the plaintiffs and against the defendants.

Prayer in the second suit (Annexure P-1)

Thus, in view of the above facts and circumstances the plaintiffs prays that a decree for separate possession by way of partition by actual metes and bounds separating 2/5th share of the plaintiffs out of the properties detailed in para No.2 of the plaint above along with consequential relief of permanent injunction restraining the defendants from interfering in possession or changing nature or raising any sort of construction or from creating any charge or lien whatsoever,

CR-2738-2018 (O&M)

may kindly be passed in favour of the plaintiffs against the defendants with costs of the suit.

Any other relief which this Hon'ble Court deems fit & proper may also be granted in favour of the plaintiffs and against the defendants."

On juxtaposition of both the prayers, the matter cannot be said to be directly and substantially the same for attracting the provisions of Section 10 of CPC.

Keeping in view the facts and circumstances, I do not find any illegality and perversity in the impugned order rejecting the application, much less, cannot be said to be passed without jurisdiction. No ground for interference is made out.

The present revision petition is dismissed.

14.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**