

105.

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

Civil Revision No.5250 of 2016

Date of decision:30.01.2018

PARAMJEET KAUR

... Petitioner

Versus

KASHMIR SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Mohan Singla, Advocate,
for the petitioner.

Mr. Amit Goyal, Advocate,
for the respondent.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 13.07.2016 (Annexure P-6) passed by learned Civil Judge (Junior Division), Tohana, District Fatehabad, whereby on an application filed by the respondent-defendant under Section 10 of CPC, learned Civil Court has stayed the proceedings in the present suit by observing that the present is a subsequent suit titled as 'Paramjit Kaur Versus Kashmir Singh' while invoking Section 10 of CPC.

Learned counsel for the petitioner has argued that the petitioner-plaintiff being the General Power of Attorney holder of Davender Singh has filed a suit for possession regarding agricultural land, as detailed in the headnote/plaint, against the defendant-Kashmir Singh. One Sukhwinder Singh has also filed a suit for declaration against many

defendants including Davender Singh, for whom the present petitioner is

holding power of attorney. Sukhwinder Singh has filed a suit for declaration that the sale deed No.6607 dated 27.01.2012 executed by the deceased Satpal Singh in favour of Davender Singh son of Gurmel Singh and mutation No.2514 dated 31.01.2012 sanctioned on the basis of sale deed No.6607 dated 27.01.2012 are wrong and illegal. In the suit filed by the present petitioner/plaintiff, defendant has moved an application under Section 10 of CPC so as to stay the proceedings in the suit on the premise that the suit for possession is on the basis of sale deed No.6607 dated 27.01.2012 and mutation thereof. The said application filed by the respondent-defendant was allowed by the learned Civil Judge vide order dated 13.07.2016 by observing therein that the matter substantially in issue in both the civil suits is the same and, therefore, the proceedings in the present suit were ordered to be stayed.

On a specific query being put to learned counsel for the respondent-defendant as to whether the parties in both the suits are common, he states that the parties are not common.

I have heard learned counsel for the parties and perused the record.

In view of above, this Court finds that the suit has been filed by the petitioner, being General Power of Attorney of Davender Singh, against Kashmir Singh and in a separate suit filed by Sukhwinder Singh, Davinder Singh is a common party. There are as many as six other defendants in the suit. Therefore, the order passed by the learned Civil Judge (Junior Division), Tohana, District Fatehabad, is contrary to record as all the parties in both the suits are not common and in order to invoke Section 10 of CPC, it is one of the basic requirements that the matter in issue should be directly

and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them litigating under the same title, should be same. Since the parties in the present suit are different, this Court finds that the order dated 13.07.2016 deserves to be set aside.

Accordingly, present petition is allowed, order dated 13.07.2016 is set aside and the trial Court is directed to proceed in the suit in accordance with law.

So far as the prayer of the respondent-defendant that both the suits should be proceeded together by the same court, he is at liberty to move such an application before the Court who shall take note of his contention and shall act in accordance with law.

(HARI PAL VERMA)
JUDGE

30.01.2018
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.