

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 132

CR-6043-2018

Date of decision : 11.09.2018

Ram Pal

..... Petitioner

VERSUS

Om Parkash

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Lajpat Sharma, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 24.04.2018, passed by the Civil Judge (Junior Division), Kaithal (for short, the Trial Court), dismissing the application filed by the petitioner under Section 10 CPC for staying the proceedings of the respondent's suit or in the alternative for framing of an additional issue. Also under challenge is order dated 04.08.2018, passed by the Trial Court closing the petitioner's defence.

The facts in brief which need to be noticed for adjudicating upon the present petition are that on 09.12.2014 the petitioner filed a suit (for short the, first suit) seeking therein to be declared owner in joint possession of the suit property as detailed and described in the suit. The sale deeds executed by the respondent through which a part of the suit property had been sold were also challenged. This suit was filed by the petitioner against the respondent (his father), mother, brother and vendees in the sale deeds under challenge.

While the petitioner's suit was pending, the respondent-Om Parkash, father of the petitioner, filed another suit (for short, the second suit) in which the petitioner was the only defendant. The respondent's suit

was for permanent injunction to restrain the petitioner from interfering in his peaceful possession over the suit property. It was further prayed therein that the petitioner be restrained from dispossessing him.

In the second suit which had been filed by the respondent, the petitioner filed an application under Section 10 CPC seeking stay of the proceedings in that suit as according to him the subject matter of the second suit and the parties thereto as also the issues raised therein were the same as in the petitioner's suit. In the alternative, framing of an additional issue was sought as to whether the suit property was ancestral.

Through order dated 24.04.2018, the Trial Court dismissed the petitioner's application. Thereafter on 04.08.2018 the petitioner's defence was also struck off. Both the afore referred orders dated 24.04.2018 and 04.08.2018 are the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submitted that the remedy available to the respondent to seek injunction was by way of filing of a counter-claim in the first suit filed by the petitioner and not through a separate suit; the Trial Court erred in not staying the proceedings of the second suit filed by the respondent as the suit property, the parties to both the suits as also the issues raised therein were the same and that in any case even if the Trial Court did not agree with the petitioner's prayer for staying the proceedings, it should have permitted framing of the additional issue as sought for by the petitioner.

The afore submissions made by learned counsel for the petitioner have been considered but no merit in the same is found.

In the year 2014, the petitioner filed a suit against the respondent i.e. his father as also his mother, brother and purchasers of part

of the suit property sold to them by his father, primarily on the ground that the suit property was co-parcenary in which the petitioner was a co-owner by birth. While the petitioner's suit was pending, in the year 2015, the respondent filed the second suit in which the petitioner was the only defendant and through which the respondent sought an injunction to restrain the petitioner from interfering in the respondent's peaceful possession over the suit property.

From the above facts which are not in dispute, it is clear that the issues raised in both the afore referred suits are distinct. The parties to the suits are also different and in the petitioner's suit sale deeds executed by the respondent are also challenged. Therefore, no error is found in the order passed by the Trial Court rejecting the application filed by the petitioner under Section 10 CPC seeking stay of the proceedings of the second suit filed by the respondent.

So far as the alternate plea of the petitioner for framing of an additional issue is concerned, it is not disputed that in the second suit filed by the respondent issues were framed on 11.05.2016 in the presence of counsel for the parties. At that time as also for about one year and four months thereafter no objection whatsoever was raised by the petitioner with regard to framing of issues. Only when the respondent/plaintiff's evidence in the second suit was over and numerous effective opportunities had been granted to the petitioner to lead his evidence did he seek the framing of an additional issue as to whether the property was ancestral or not. No explanation for the delay in filing of the application was either given before the Trial Court or even before this Court. Thus, both on the principle of estoppel as also on the basis of unexplained delay, such prayer made by the

petitioner has rightly been rejected by the Trial Court.

Even otherwise, no prejudice would be caused to the petitioner as the additional issue sought to be raised by him in the second suit is the subject matter in the first suit filed by him and that the same would be decided therein.

So far as the order dated 04.08.2018, passed by the Trial Court, closing the petitioner's evidence is concerned, it is not disputed that the petitioner was granted at least five effective opportunities to lead his evidence. No reason is forthcoming from the learned counsel for the petitioner or from the record as to why he could not lead his entire evidence in such time. Thus, no further time for the same can be granted especially when neither before the Trial Court nor before this Court it is shown by the petitioner as to for what purpose he seeks the opportunity prayed for by him.

In view of the above, no error is found in the orders impugned before this Court.

Dismissed.

11.09.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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