

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

C.R No.7245 of 2015

Jasbir Singh

....Petitioner

Versus

Amarjit Kaur and Anr.

....Respondents

Date of Order: 05.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Arya, Advocate for the petitioner.

Mr. Vivek Salathia, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

The petitioner-defendant has assailed the impugned order dated 03.9.2015 (P.7) passed by learned Civil Judge (Jr. Division), Gurdaspur whereby application under Section 10 CPC has been dismissed.

Plaintiff filed the suit for declaration to the effect that he being owner to the extent of half share out of the land measuring 49 kanals 19 marlas comprised in Khewat No.113 Khatoni No.218 Rect. 56 Killa 9 Min West (4-12) 10 Min South (4-4) 11 Min East (4-0) 19 (7-3) 20 (8-7) 219 Khatoni Rect 56 Killa 9 South Min East (3-8) 10 Min North (3-16) 11 Min West (4-0) 19 Min Centre (2-8) Khewat No.85 Khatoni No.172, Rect. No.56, Killa No.12 min West (5-12) khatoni No.173 Rect 56 Killa No.12 Min West (2-8) as entered in the Jamabandi for the year 1981-82 Hadbast No.627 situated in the revenue estate of village Jagatpur Kalan, Tehsil and District Gurdaspur and the entries depicting the names of the

defendants as owners more than half share in the Jamabandi were illegal and based on some fraud, with consequential relief of suit for possession of half share by means of partition.

Said suit is pending adjudication i.e at the initial stage at Gurdaspur wherein an application under Section 10 CPC for staying of aforesaid proceedings was submitted on account of decision of the Civil suit No.25 of 9.12.1994/10.1.1995 titled Smt Kanso Vs. Jasbir Singh and Ors. in respect of same property qua the estate of Bela Singh, but the same had erroneously been dismissed vide the impugned order.

Learned counsel for the petitioner submitted that the previous suit was decided on 6.10.1997 and appeal preferred against the same was disposed of on 13.12.2000. The impugned order passed by the trial Court is not only erroneous but fallacious as the issues involved in both the cases substantially are the same, therefore the proceedings of subsequent suit are also liable to be stayed. Even this Court while issuing notice of motion, stayed further proceedings before the trial Court and thus it is prayed that plaintiff-Amarjit Kaur cannot be permitted to continue with proceedings any further. He also submitted that the plaintiff in subsequent suit was defendant No.15, who was, thereafter proceeded against ex parte.

On the other hand, learned counsel for the respondent fully supported the impugned order stating that the application has rightly been dismissed. He submitted that although in both the suits, the dispute was with regard to estate of Bela Singh but the subject matter of the suit property in the previous suit was not included in subsequent suit. In this regard, he has drawn attention to the subject matter of the property in the previous suit, which reads as under:

“Suit for joint possession of 1/10th share out of land measuring 41 kanals, 18 marlas comprised in Khewat No.151, 152, Khatauni No.306, 307, Rect No.56, Killa No.9 (8-0), 10 (8-0), 19 (9-11), 11 (8-0), 20 (8-7), as entered in the Jamabandi for the year 1991-92 situated in village Jagatpur Kalan, Tehsil Gurdaspur.”

After hearing learned counsel for the parties and appraising the paper book, I find no force in the submissions made by learned counsel for the petitioner.

From the perusal of reliefs sought in both the suits, it is evident that the relief sought in the previous suit was with regard to joint possession of 1/10th share out of land measuring 41 kanals, 18 marlas comprised in Khewat No.151, 152 whereas the plaintiffs in the present suit is claiming half share out of the land measuring 49 kanals 19 marlas comprised in Khewat No.113 although from the estate of Bela Singh. It cannot be stated that the matter squarely falls within the provisions of Section 10 CPC giving cause to the petitioner for staying the proceedings. It cannot be believed that the matter in dispute is directly and substantially the same as arisen in a previously instituted suit between the same parties enabling this Court to stay the proceedings.

Therefore no illegality or perversity is made out warranting any interference by this Court.

Dismissed.

April 05, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No