

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

Sr. No.211

CR-4487-2009 (O&M)

Date of decision: 24.07.2019

Sunita and another

....Petitioners

versus

Ram Murti @ Rama and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Amit Kumar Jain, Advocate
for the petitioners.

Ms. Gurdeep Kaur, Advocate and
Mr. Sandeep K. Sharma, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 09.05.2009 passed by the Civil Judge (Junior Division), Jind, allowing an application filed by the respondents under Section 10 CPC, resulting in the grant of stay of proceedings in the petitioners' suit on the ground that the issue raised by the petitioners in the suit was directly and substantially the same as in another suit pending between the same parties before the Civil Court at Rohtak.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioners, alongwith respondents No.2 and 3, in the capacity of legal heirs of Deena Nath, filed a suit seeking therein to be declared owners in possession, to the extent of their shares, of various tracts of land situated in District Jind, detailed and

described in the head note of their plaint (for short – the suit properties). Will dated 27.07.2001 allegedly executed by late Deena Nath, who was husband of petitioner No.1 and father of petitioner No. 2 and respondents No.2 and 3, was also challenged on the ground that the same had been forged by respondent No.1.

At the initial stage of the suit, respondent No.1 filed an application under Section 10 CPC seeking stay of further proceedings in the suit on the ground that the petitioners had filed another suit in the Civil Court at Rohtak through which they had also prayed for being declared legal heirs of late Deena Nath and thus entitled to withdraw the money on maturity of Kisan Vikas Patras purchased by him and deposits made by late Deena Nath in the Post Office at Rohtak. According to respondent No.1, the issue raised by the petitioners in their suit filed at Jind was directly and substantially the same as in the civil suit filed by them at Rohtak and was between the same parties.

The Trial Court, through its order dated 09.05.2009, allowed respondent No.1's application and accordingly, stayed the petitioners' suit filed by them at Jind. Such order is under challenge in the present proceedings.

After hearing learned counsel for the parties as also perusing the record with their able assistance, the relevant facts which have emerged are that the petitioners, in the capacity of legal heirs of Deena Nath, had filed a suit at Jind seeking therein to be declared owners in possession, to the extent of their shares, qua Deena Nath's properties situated in District Jind. They had further challenged Will dated 27.07.2001 of late Deena Nath as according to them the said Will had been forged by respondent No.1.

The petitioners had filed another suit at Rohtak. In such suit, the only issue raised by them was that after declaring them as legal heirs of Deena Nath, they be held entitled to encash the Kisan Vikas Patras purchased by Deena Nath and deposits made by him in the Post Office at Rohtak.

The petitioners' suit filed by them in Rohtak was dismissed by the Trial Court. The appeal filed by them against the dismissal of their suit has also been dismissed by the First Appellate Court and their regular second appeal is pending before this Court. A perusal of the judgments rendered by the Trial Court as also by the First Appellate Court reveal that in the petitioners' suit at Rohtak though respondent No.1 in her written statement had referred to the Will dated 27.07.2001 of late Deena Nath, no issue in that regard was framed. This was so because the Kisan Vikas Patras and the deposits made in the Post Office by late Deena Nath were pleaded and found to have been jointly purchased/made by Deena Nath and respondent No.1 – Ram Murti @ Rama. Accordingly, both the Trial Court as also the First Appellate Court dismissed the petitioners' suit and appeal only on the ground that respondent No.1 was joint holder of the aforesaid Kisan Vikas Patras and other monthly income schemes in the Post Office at Rohtak and therefore, after Deena Nath's death was entitled to get them encashed on their maturity. There is no discussion or finding returned by both the Courts with regard to the alleged Will of Deena Nath dated 27.07.2001.

Thus, though both the suits filed by the petitioners at Jind and Rohtak have a small degree of overlapping and are between the same parties but the issues raised in them cannot be considered to be directly and

substantially the same particularly when no issue with regard to Deena Nath's Will was framed and decided in the petitioners' suit at Rohtak which would be one of the main issues to be adjudicated upon in the petitioners' suit filed by them at Jind. Thus, there is also no question of there being conflicting judgments in both the aforesaid suits filed by the petitioners.

In view of the above, the impugned order is set aside and the Trial Court is directed to proceed with the petitioners' suit in accordance with law.

Since the petitioners' suit was filed on 27.05.2008 in which the Court is informed that issues have also not been framed, the Trial Court is directed to finally adjudicate upon the petitioners' suit within ten months from the date of receipt of a certified copy of this order.

The parties are directed to appear before the Trial Court on 13.08.2019.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

July 24, 2019
Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No