

**Date of Decision: 19.03.2019**

## Versus

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**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Mr. Viren Jain, Advocate  
for the respondent.

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***RAJ MOHAN SINGH, J.***

[1]. Vide this common order, CR No.5706 of 2018 titled Rajinder Aggarwal and another Vs. M/s K.R. Finmark Pvt. Ltd.

and CR No.5782 of 2018 titled Bindu Aggarwal and others Vs. M/s K.R. Finmark Pvt, Ltd. are being disposed of. Facts are being taken from CR No.5706 of 2018.

[2]. Petitioners have challenged the order dated 02.05.2018 passed by Additional District Judge, Ludhiana in Civil Appeal titled Rajinder Aggarwal and another Vs. K.R. Finmark whereby the application under Section 10 CPC filed by the petitioners for staying the proceedings in the appeal was dismissed.

[3]. A civil suit for permanent injunction was filed by the respondent against the petitioners, seeking restraint against the defendants/petitioners from dispossessing the plaintiff/respondent and from interfering in the peaceful possession of the plaintiff over the suit property.

[4]. The said suit was decreed by the trial Court vide judgment and decree dated 05.08.2014. Defendants/petitioners were restrained from dispossessing or interfering in the peaceful possession of the plaintiff/respondent over the suit property.

[5]. An appeal was preferred before the Lower Appellate Court by the defendants/petitioners. In the appeal, an application was filed under Section 10 CPC for staying the proceedings of the appeal on the ground that prior to filing of the suit by the respondent/plaintiff, Bindu Aggarwal, Mini Aggarwal and Neeru Aggarwal, all partners of M/s Nav Bharat Banaspati

and Allied Industries had filed a suit for declaration, challenging the sale deeds in favour of the respondent being null and void. The said suit titled Bindu Aggarwal and others Vs. Rohit Aggarwal and others is still pending in the Civil Suit at Ludhiana, wherein title of the suit is under challenge. Since the respondent is claiming permanent injunction on the basis of said sale deeds, therefore, the said pending suit is necessary to be decided prior to the appeal in question, as the issue in the suit is directly and substantially in issue in both the cases. The title dispute is pending in the previously instituted suit and that has material bearing in the pending appeal.

[6]. The application was contested by the plaintiff/respondent on the premise that the issue in the present appeal and the earlier suit is not directly and substantially in issue in the appeal.

[7]. The application was dismissed by the Additional District Judge, Ludhiana vide the impugned order dated 02.05.2018 on the premise that the proceedings in the appeal cannot be stayed for unlimited period when the cause of action and the relief in both the proceedings are distinct and will not in any manner come in the way of declaratory suit. The scope of suit for permanent injunction and the pending appeal would be subject to following due course of law.

[8]. As per facts involved in the suit and the appeal, a family partition took place in the year 1993 between the members of the joint family i.e. partners of M/s Nav Bharat Vanaspati & Allied Industries. The refinery unit at village Kandian fell into the share of Ramesh Aggarwal Group. Kishore Lal Aggarwal Group (defendants in the subsequent suit) got the Nav Bharat Vanaspati & Allied Industries, Doraha Mill. All the male members signed the family settlement in the presence of female members, but all the female members of the family were not asked to sign mutually agreed instrument between the parties. In the year 1993, Ramesh Aggarwal Group formed a new partnership under the name and style of M/s Rattan Foods. In the year 1997, the property in dispute was sold by Ramesh Aggarwal Group to the Company. Plaintiff claimed that the Company is in peaceful possession of the property in dispute and defendants have tried to interfere in the possession.

[9]. The suit for permanent injunction came to be filed by the Company and the same was decreed by the trial Court. A suit for declaration and permanent injunction was filed by Bindu Aggarwal and others. The said suit was once dismissed, but the same was restored vide order dated 22.09.2016 and is still pending. The subsequent suit for permanent injunction filed by the Company was decreed and appeal is

pending before the Lower Appellate Court.

[10]. Section 10 CPC requires that the suit must be between the same parties or their successors. The matter in issue in the later suit must be directly and substantially the same as in the previous suit. The matter in issue in both the suits is different. In the previous suit, the plaintiffs have sought declaration, challenging the sale deeds executed by defendant Nos.1 and 2 in favour of defendant No.3. They further claimed permanent injunction, restraining the defendants from alienating the suit property. Whereas in the subsequent suit, the plaintiff/respondent has claimed permanent injunction, restraining the defendants from interfering in its possession. In both the suits, the cause of action is substantially different. In the previous suit, possession is not in dispute. Plaintiffs have challenged the sale deeds. In the subsequent suit, the plaintiff has claimed permanent injunction and the same was decreed by the trial Court. Both the suits must be pending in the Court of law. Once the previous suit was dismissed in default, but the same was restored on 22.09.2016. The subsequent suit has already been decided by the trial Court and an appeal is pending. The parties must be litigating under the same title in both the suits.

[11]. In **Surinder Singh Vs. Major Teja Singh Mansahia,**

(P&H) 1994(1) R.R.R. 446, it was held that primary object of the provision is to prevent the Courts of concurrent jurisdiction from simultaneously adjudicating upon the same dispute. This was so in the facts and circumstances of the case that the process is expensive and time consuming. The legislature has introduced this provision so as to ensure that time of Courts is not unnecessarily wasted. It must be established that the suits are between the same parties or their successors and the matter in issue in the later suit is directly and substantially in issue in the earlier suit. In the absence of these two conditions, the provision in terms of Section 10 CPC cannot be invoked.

[12]. In Smt. Naurati and others Vs.Mehma Singh (P&H) 1972 PLR 558, it was held that two parallel proceedings in respect of same cause of action should be avoided and policy of law is to confine the plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by the Courts in respect of same relief.

[13]. Three conditions must exist for prohibiting the Court from proceeding with the trial of the suit under the aforesaid provision:-

- (i) Where there is a previously instituted suit between the parties.
- (ii) Where the matter in issue is directly and

substantially the same in both the suits.

(iii) Where a suit is pending between the same parties or between the parties under whom they or any of them claim litigating under the same title.

[14]. The predominant condition is that the matter in issue should be directly and substantially in issue as in the previously instituted suit between the same parties and the decree in one of the suit is bound to frustrate the decree in other suit. The acid test is when the decision of the earlier suit will operate as *res judicata* in the subsequently instituted suit. The object is to prevent the Courts of concurrent jurisdiction from simultaneously adjudicating upon two parallel litigations in respect of same cause of action and the same subject matter involving same relief. The ratio laid down in **Aspi Jal Vs. Khushroo Rustom Dadyburjor 2013(2) RCR (Civil) 976 (SC)** can be relied.

[15]. In view of aforesaid, I find that cause of action in both the suits is different. The earlier suit is for declaration. The subsequent suit is for permanent injunction. The scope of suit for permanent injunction is limited to the concept of due course of law, whereas in the earlier suit, no such phenomenon is involved.

[16]. Faced with this situation, I find no merit in these

revision petitions. There is no error of jurisdiction in the impugned order dated 02.05.2018 passed by Additional District Judge, Ludhiana. These revision petitions are accordingly dismissed.

19.03.2019

*Prince*

(RAJ MOHAN SINGH)

JUDGE

Whether reasoned/speaking

Whether reportable

Yes/No

Yes/No