

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

Date of decision: 17.02.2020

CM No.3050-CII of 2020 in/and
CR No.392 of 2020 (O&M)

Sarabjit Singh

...Petitioner

Vs.

Ramandeep Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arjun Veer Sharma, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.3050-CII of 2020

1. Application is allowed.
2. The fresh affidavit of the petitioner in place of the earlier one is accepted and taken on record.

CR No.392 of 2020 (O&M)

1. Order II Rule 2 CPC was not designed in 1908 for matrimonial matters *stricto sensu* as they were hardly in existence in litigation at the turn of the century among the Hindus. This salutary jurisprudential provision was incorporated in the Code to guard against the same parties litigating under the same title on the same cause of action, directly or substantially, piecemeal by calling upon them to claim all the available reliefs and cause/s of action in one proceeding to prevent multifarious and vexatious litigation on the principle that all available reliefs and prayers must be claimed in one action. Otherwise, it would lead to litigation never coming to an end multiplicity of suits. Therefore the bar was crated. Order II Rule 2 is meant

for ordinary civil rights to property, private and public rights etcetera, and not to those rights which remain kinetic and ever changing such as in matrimonial disputes where a change of circumstance or a fact or subsequent event can change the entire aspect of the case. I would, therefore, not interfere with the order passed by the Civil Judge (Junior Division), Ludhiana on 16.07.2019 dismissing the petitioning defendant's application claiming bar of Order II Rule 2 CPC.

2. Looking to the facts, a few things may be said which are relevant for the purposes of determining this petition. The petitioner – Sarabjit Singh is the husband litigating against his wife - Baljit Kaur and his two minor daughters Ramandeep Kaur and Harashdeep Kaur. The subsequent suit has been filed by Baljit Kaur and two daughters against Sarabjit Singh claiming that the suit property by nature is ancestral and they had the right of inheritance, which dispute was subject matter of previous suits.

3. The first suit was filed by the wife and her two daughters for creation of charge on specific khasra numbers, which was allowed vide judgment and decree 02.07.2014 (Annex P-1). The second suit was again instituted by Baljit Kaur and her two daughters saying that the land sold by the petitioner in the name of his mother is fabricated and vitiated by fraud, which stands dismissed by judgment and decree dated 21.01.2016.

4. This revision arises out of the third suit filed by the two minor daughters alone against the father, grand-mother and brother of the petitioner saying that the suit land which was subject matter of the previous suits are ancestral to them. In view of this, it cannot be said that in the third suit there should be placed any bar on the daughters of the petitioner for claiming their

rights by inheritance coming from the father. This is despite the challenge to the sale deed brought by mother and daughters executed between the father and his mother transferring property to her. Ramandeep Kaur and Harshdeep Kaur were plaintiffs No.2 & 3 respectively in the second suit [Case No.38349 of 2013 instituted on 11.11.2010 and decided on 21.01.2016] in which the following prayer was made:

“Suit for declaration to the effect that the sale deed bearing vasika No.5112 dated 13.08.2010 executed by defendant No.1 in favour of defendant No.2 regarding the land measuring 10 Kanal, 0 Marla, out of land, comprised in Khasra No.4//2/1, 3/2, 8, 9, 12, 13, 18, 22, 23, 19, 9//3/2, 7/2, 8/1, (78-1), 9//4/2, 5/1, 6/2, 7/1, 14/2, 15, 16, 17/1, 24/2, 25, 15//4/3, 5/1, (59-1) Khata No.13/14, 14/15, as per jamabandi for the year 2007-2008 situated at village Dolon Khurd, Hadbast 287, Tehsil and District Ludhiana and mutation thereof are void, illegal and are of no legal consequence as against the rights of the plaintiffs in the suit property.

And

Suit for permanent injunction restraining the defendant No.2 from further leasing/patta the land for evacuation/digging of sand and soil and earth and from further alienating the land subject matter of sale deed bearing vasika No.5112 dated 13.08.2010 on the basis of oral and documentary evidence.”

5. In the present suit, the prayer is to the following effect:

“Suit for declaration to the effect that the land detailed as under:-

- (i) 1/18 share in land measuring 0-2 Marlas comprised in Khata No.11/12, Killa No.125/1/1/2;
- (ii) 1/6 share in land measuring 0-6 Marlas comprised in Khata No.12/13, Killa No.228, 229;
- (iii) 1/3 share in 740/1561 share in land measuring 78 Kanal 1 Marla comprised in Khata No.13/14, Kill No.4//2/1, 3/2, 8, 9, 12, 13, 18, 22, 23, 19, 9//3/2, 7/2, 8/1;

(iv) 1/3 share in 197/1181 share in land measuring 59 Kanal 1 Marla comprised in Khata No.14/15, Killa No.9//4/2, 5/1, 6/2, 7/1, 14/2, 15, 16, 17/1, 24/2, 25, 15//4/3, 5/1;

(v) 1/3 share in 1/24 share in land measuring 0 Kanal 11 Marla comprised in Khata No.181/2201, Killa No.14//24, As per jamabandi for the year 2007-2008 situated at village Dolon Khurd, Tehsil and District Ludhiana is ancestral coparcenary property in the hands of defendants and the plaintiffs being coparceners have interest/title in the aforesaid land.

And

Suit for permanent injunction restraining the defendants No.1 & 2 from alienating or disposing of any portion of the suit land in any manner whatsoever, on the basis of oral and documentary evidence.”

6. The daughters contend that the land owned by the petitioner-father is ancestral coparcenary property in which they have a right, which land is besides the land sold by Sarabjit Singh to his mother. Therefore, there is no overlapping.

7. Learned counsel submits that the land falling beneath the sale deed is also mentioned in the third suit. This fact can be determined only upon evidence led by the parties and it is not a case where the suit can be thrown out under Order VII Rule 11 CPC by the bar of Order II Rule 2 CPC.

8. On a query put, learned counsel stated that husband and wife are locked in a matrimonial battle.

9. The relevant observations of the trial court declining the application under Order II Rule 2 reads as follows:

“4. The suit in which the present application has been filed, is subsequent to the suit titled as “Baljit Kaur and others Vs. Sarabjit Singh and another” bearing No.96 of 11.05.2010 was with regard to the relief of recovery of Rs.15,000/- under Hindu Adoption and Maintenance Act and for creating charge

upon the suit property. The another litigation having title “Baljit Kaur Vs. Sarabjit Singh and other” case No.38349 of 2013 was with regard to declaration regarding the annulment of sale deed dated 13.08.2010 executed by Sarabjit Singh in favour of Surjit Kaur. Both the litigations were decided and their fate has not been disputed by the parties. It is also not disputed between the parties to the suit that parties to both the suits are not the same. However, reliefs sought in all the suits are different. It is also not disputed that both the suits have been filed on different causes of action. Present suit pertains to the relief of declaration qua the ownership on the suit property by claiming it to be coparcenary property. The matter in issue in both the suits, is entirely different and unless the court finds that the matter in issue in all the suits is same, the proceedings cannot be stayed by invoking the power of Section 10 CPC. So, the reliefs sought in all the suits are also different and further the applicant/defendant has also failed to prima facie make out that the matter in issue in all the suits is directly and substantially the same and decision in the former suit will operate as res judicata in the present suit, as required u/s 10 CPC to stay the proceedings.”

10. Learned counsel submits that remarks have been made in the impugned order (supra) which appear to sound conclusive findings at the interim stage as are contained in paragraph 4 of the impugned order, as reproduced above. He can be rest assured that nothing said by the trial court is to the prejudice of the petitioner or he is bound by, as he will have full liberty to produce his evidence in defence of the suit. However, no final opinion can be expressed without parties admitting evidence on file. This is what the order dated 16.07.2019 would actually mean.

11. To sum up, these are triable issues presented in the third suit the fate of which will depend on the trial and the issues to be struck after the

defendant's written statement is put in and the evidence adduced by the disputing parties.

12. No grounds to interfere with the impugned order are made out there being apparently no mistake, error or material irregularity and illegality committed by the learned trial court in coming to the conclusion that trial cannot be aborted by the bar of law in Order II Rule 2 CPC.

13. The petition is accordingly dismissed, needless to say, without expressing any opinion on the merits of the case as they are yet to be revealed.

17.02.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes/No