

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

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CR-2379-2020

Date of decision : 14.10.2020

Raj Rani

.....Petitioner

Versus

Madan Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Anjum Ahmed, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner-Raj Rani has filed the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 08.09.2020 passed by learned Civil Judge (Junior Division), Faridabad in Civil Suit No.1771 of 2020 titled as 'Raj Rani Vs. Madan Lal and others' whereby application under Section 10 of the Code of Civil Procedure, 1908 (for short, "the CPC") was allowed and Civil Suit No.1771 of 2020 titled as 'Raj Rani Vs. Madan Lal and others' was stayed till the final decision of Civil Suit No.1546 of 2020 titled as 'Madan Lal Vs. Daleep Kumar'.

Briefly stated, the petition has been filed on the averments that the petitioner is owner in possession of the property in dispute by virtue of registered transfer deed dated 20.12.2018 executed by her husband Daleep Kumar on the basis of family settlement arrived at in the year 2014. Daleep Kumar husband of the petitioner had taken loan of Rs.7 lakhs from respondent No.1-Madan Lal for repayment of loan

taken from IIFL Bank and signed all the papers as asked by respondent No.1. The petitioner filed Civil Suit No.1771 of 2020 titled as 'Raj Rani Vs. Madan Lal and others' for permanent injunction against Madan Lal and others. Respondent No.1 filed Civil Suit No.1546 of 2020 for declaration and permanent injunction against her husband Daleep Kumar claiming ownership and possession on the basis of affidavit dated 06.07.2020 executed by Daleep Kumar in his favour on payment of amount of Rs.7 lakhs. The petitioner was not party to the above said Civil Suit. Transfer deed dated 20.12.2018 was executed much prior in time to affidavit dated 06.07.2020 executed in favour of respondent No.1 by her husband Daleep Kumar. Respondent No.1 filed application under Section 10 of the CPC for stay of Civil Suit filed by the petitioner. Learned Civil Judge (Junior Division), Faridabad has wrongly allowed the said application and stayed trial of the Civil Suit filed by the petitioner. The impugned order suffers from material illegality and is liable to be set aside.

I have heard learned counsel for the petitioner and gone through the record.

Learned counsel for the petitioner has argued that Daleep Kumar, husband of the petitioner transferred the suit property in favour of the petitioner vide registered transfer deed dated 20.12.2018 on the basis of family settlement made in 2014 much before execution of affidavit dated 06.07.2020 by him in favour of respondent No.1. Daleep Kumar, husband of the petitioner was not owner in possession of the suit property at the time of alleged transaction and execution of affidavit dated 06.07.2020 by him in favour of respondent No.1 as well

as at the time of filing of first Civil Suit No.1546 of 2020. The petitioner is not a party to the above said first Civil Suit filed by respondent No.1. The conditions for applicability of Section 10 of the CPC were not satisfied and learned Civil Judge (Junior Division), Faridabad has wrongly allowed the application and stayed trial of the second Civil Suit filed by the petitioner. Therefore, the petition may be allowed and the impugned order may be set aside.

Section 10 of the CPC, which provides for stay of suit, reads as under:-

“10. Stay of Suit:-No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

The object of the rule contained in Section 10 of the CPC is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue and to avoid conflicting decisions and also to protect the parties against multiplicity of proceedings and consequent inconvenience.

For the application of section 10 of the CPC, the following conditions have to be satisfied:-

- (i) There must be two suits, one previously instituted and the other subsequently instituted.

(ii) The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.

(iii) Both the suits must be between the same parties or between the parties under whom they or any of them claim.

(iv) The previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other court in India or in any Court beyond the limits of India established or continued by the Central Government or before the Supreme Court.

(iv) The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.

(v) Such Parties must be litigating under the same title in both the suits.

The fundamental test to determine the question of applicability of Section 10 of the CPC is whether the final decision in the previously instituted suit will operate as resjudicata in the subsequently instituted suit.

Section 10 of the CPC does not bar subsequent institution of the second suit and merely bars trial thereof. The provisions of Section 10 of the CPC are mandatory and on applicability thereof the trial of subsequently instituted suit has to be stayed and no discretion is left with the Court.

In the present case respondent No.1 Madan Lal filed Civil Suit No.1546 of 2020 titled as 'Madan Lal Vs. Daleep Kumar' for declaration as to his ownership and possession with alternative prayer for decree for specific performance of contract and permanent

injunction restraining his dispossession from land comprised in Rectangle No.75, Killa No.15/2/1 with area measuring 28 square yards claiming relinquishment by defendant-Daleep Kumar of his right, title and interest in the said property in his favour for consideration of Rs.7 lakhs by execution of affidavit dated 06.07.2020. The petitioner has filed Civil Suit No.1771 of 2020 titled as 'Raj Rani Vs. Madan Lal and others' for permanent injunction in respect of property measuring 28 square yards comprised in Rectangle No.75, Killa No.15/2/1 on the basis of execution of transfer deed dated 20.12.2018 by her husband Daleep Kumar in her favour on the basis of family settlement which took place in the year 2014. Both the Civil Suits have been filed in respect of the same property. Civil Suit No.1546 of 2020 was filed before filing of Civil Suit No.1771 of 2020. The Court before which Civil Suit No.1546 of 2020 is pending is competent to grant the relief claimed in Civil Suit No.1771 of 2020. For determining whether the matter in issue in the subsequently instituted suit is directly and substantially in issue in the previously instituted suit absolute identity of the parties in both the suits is not a consideration. Therefore, the mere fact that the petitioner is not a party to the previously instituted civil suit does not exclude the applicability of Section 10 of the CPC. The petitioner as well as respondent No.1 are both claiming title through Daleep Kumar who is admitted to be the previous owner in possession thereof and are litigating under the same title of ownership and possession over the suit property derived through him. The claim of the petitioner is, in the very nature of things, integral part of defence of defendant Daleep Kumar in the previously instituted suit of having

already transferred the suit property in favour of the petitioner. The matter in issue required to be heard and decided in both the Civil suits is directly and substantially the same as to whether Daleep Kumar was owner in possession of the suit property at the time of transaction in favour of present respondent No.1 or had already transferred the same in favour of the present petitioner. In the eventuality of Civil Suit No.1546 of 2020 being decreed Civil Suit No.1771 of 2020 will be barred by the principle of resjudicata. It is thus obvious that all the conditions for applicability of Section 10 of the CPC are satisfied in the case and the application has been rightly allowed and subsequently instituted Civil Suit No.1771 of 2020 has been rightly stayed by learned Civil Judge (Junior Division), Faridabad vide impugned order dated 08.09.2020 which does not suffer from any illegality and is not liable to be set aside by this Court in exercise of the revisional powers.

In view of the above discussion, the petition being devoid of any merit is dismissed.

14.10.2020

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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