

CR-2153-2019 (O&M)

Date of decision: 17.09.2021

Vishnu Kumar

.....Petitioner

versus

Kasturi Devi

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Abhilaksh Grover, Advocate
for the petitioner.Mr. Dharam Bir Bhargava, Advocate
for the respondent.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

This is civil revision under Article 227 of the Constitution of India moved by petitioner-Vishnu Kumar against Smt. Kasturi Devi challenging and for setting aside of order dated 13.02.2019 (Annexure P-6) whereby, an application of the petitioner under Section 10 of CPC for staying the subsequent suit was dismissed as well as seeking stay on the operation on the said order.

Heard counsel for the parties and perused the records.

The factual background that emancipates from the oral

submissions and the records are that one-Mohinder Pal, since deceased, along with his three brothers, namely, Nirbhay Ram, Ishwar Singh and Pushpinder, were owners in equal shares of house detailed in the suit in question. Consequent upon death of Mohinder Pal on 06.12.1989, his one share in the said house devolved upon his widow-Kasturi Devi, Sunita, Sudhir Kumar, Kavita and the present petitioner-Vishnu Kumar. Share of Nirbhay Ram is claimed to have been purchased by Kasturi Devi but Vishnu Kumar-petitioner, claims that he had given the money to his mother for this transaction in purchasing 1/4th portion of Nirbhay Ram in the house. It is as a consequence of this dispute arose between the parties leading to filing of a civil suit by Vishvender Kumar and Ishwar Pal against Nirbhay Ram and others for declaration to the effect that the plaintiff and defendants are owners of the said house in equal shares and in possession as per mutual settlement.

The Court of the learned sub-Judge (1st Class), Chandigarh, vide judgment/decreed dated 18.08.1990, in view of the admitted claim of the parties, decreed the suit declaring that plaintiff/defendants to be owners of the house in question in equal shares and in possession, thereof, as per mutual private agreement and further with a rider that neither the plaintiff nor the defendants shall dispossess Kasturi Devi-widow of Mohinder Pal from one room and kitchen on the *barsati* floor and two rooms on the ground floor which have been stated to have fallen to their share

out of their 1/4th share, the same is Annexure P-1. The dispute did not end there. Petitioner-Vishnu Kumar in the year 2016 filed a suit for permanent injunction against Kasturi Devi and Sudhir Kumar, mother and brother, respectively, seeking decree for permanent injunction restraining the defendants not to interfere in the peaceful possession and enjoyment of the part of house, in dispute, consisting of three rooms, two toilets, two bathrooms, gallery, backyard, common passage as detailed in the site plan (Annexure P-1) and further not to dispossess or alienate/mortgage in any manner whatsoever the property in question. By another quirk of fate, Kasturi Devi filed against Vishnu Kumar, another suit for mandatory injunction directing the defendants to hand over vacant possession of two rooms, two toilets, two bathrooms, gallery on the ground floor of the house and a room on ground floor to the plaintiff and to pay, in the meanwhile, mesne profits at the rate of Rs.60,000/- per month, from the date of institution of the suit till handing over of the vacant possession. As a consequence relief, the plaintiff had sought a decree for permanent injunction restraining the defendants from handing over the possession and enjoyment of the above detailed portion of the house in any manner.

During the pendency of these two civil suits, an application under Section 10 of the CPC for staying the subsequent suit was moved by the defendants in Civil Suit No.2726 of 2018. The Court of learned Civil Judge (Junior Division), Chandigarh, vide

impugned order dated 13.02.2019 (Annexure P-6), dismissed the application and that is how the parties are before this Court.

Upon considering the submissions of the rival counsel Mr. Dharam Bir Bhargava, Advocate for the respondent and on perusal of the records, the Apex Court in 'Aspi Jal and another versus Khushroo Rustom Dadyburjor' 2013 (2) CCC 0840 has detailed at length the ambit of Section 10 CPC. The same is reproduced as below to lay emphasis:-

“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 sui in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

Plain reading of the provisions shows that it is significant to hold that the matter is directly and substantially in issue in the previously instituted suit and, therefore, Section 10 of CPC would come into play only if there is identity of the matter in issue in both the suits which are identical in nature and outcome.

No doubt, one is a suit for mandatory injunction and the other is a suit for permanent injunction between same very parties over right that has crystallized over the same very property and in any finding in one of the suit would have its affect and ramification on the other suit. Though, it would have been appropriate for the parties to have sought partition and declaration to earmark their respective shares in the property in question which they have never resorted to. If one accepts what is canvassed before this Court, out of 1/4th share of Mohinder Pal-deceased, predecessor in the interest of the parties to which 1/4th share of Nirbhay Ram, which has claimed to have been purchased by Kasturi Devi, total share has come up 2/8th and the very factum, if monetary contribution so claimed to have been made by petitioner-Vishnu Kumar enabling his widowed mother-Kasturi Devi to purchase the 1/4th share of Nirbhay Ram in the house, has fallen in common pool by way of "Hotch-Potch" are matters which can only be adjudicated at the trial of the suit. It would be too preposterous to make any observation at the initial stage of the suits by the Courts; else it will prejudice the case of the parties.

To the mind of this Court, rather than allowing the two suits, which are virtually going to lead to the same very conclusion to be decided independently and, thus, leading to passing of contradictory and self-defeating judgment/decrees which might also render reliefs in two suits to be un-implementable, it would sub-serve

the ends of justice and rather will prevent the parties from multifarious litigation, if both the suits are ordered to be clubbed together and disposed off by the same very Court, rather than staying the subsequent instituted suit and allowing the previous instituted suit to be disposed off.

In view of the foregoing discussions, the impugned order is set aside and the present revision petition is disposed off by remanding the matter to the trial Courts with further directions to the learned District Judge to ensure that both these two suits are entrusted to one and the same Court and which Court shall consolidate these suits and dispose off the same together by a common judgment/decree which would also result in preventing wastage of precious time of the parties and the Courts.

The petition stands disposed off.

17.09.2021

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No