

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

**C.R No. 2178 of 2020 (O & M)
DATE OF DECISION : 18.03.2021**

Sukhjit Singh and another

...Petitioner

versus

Gagandeep Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Malkeet Singh, Advocate,
for the petitioners.

Mr. A. S. Khinda, Advocate,
For the respondents.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Instant petition is directed against an order dated 12.03.2020 (Annexure P-10), passed by the trial Court, vide which, an application filed by the petitioner under Section 10 read with Section 151 of CPC for stay of proceedings, at the fag end of the trial when the entire evidence had been adduced and the matter was slated for final arguments, has been dismissed.

2. The ground, *inter alia*, canvassed for seeking stay by the petitioner is essentially that parties in another already decreed civil suit, bearing No.911 of 17.12.2005 titled Ujagar Singh Vs. Sukhjit Singh etc., qua which RSA No.1673 of

2014 is pending before this Court and parties in suit in question, pending before the trial court are same. Secondly, Learned counsel for the petitioner strenuously argues that not only the parties are same, but even the subject matter of the property is same.

3. Having heard rival contentions of learned counsels for the parties, I am in disagreement with the arguments canvassed by learned counsel for the petitioner. While the parties are partly same in both the suits, but a perusal of the record would reveal that the subject matter of both the suits is a different property. In fact, learned trial Court has threadbare gone into the aspects of the property and given cogent reasons as below :

“6. The contention of the defendants in the present case is that the plaintiff has led the present suit while concealing the agreement to sell dated 09.04.2002 which is regarding the same suit property and on the basis of said agreement to sell dated 09.04.2002, a suit has already been decided by the Court of competent jurisdiction and RSA NO.1673 of 2014 is pending before the Hon’ble High Court. This court is of the considered view that the document Ex.R5 which is relied upon by the defendants is with regard to agreement to sell property comprised in revenue estate of village Bheela and if not possible to execute the sale deed of property comprised in revenue estate of village Bheela then property comprised in village Chuharwal will be sold to the vendee whereas document Ex.R6 in itself mentions with regard to the agreement to sell dated 09.04.2002 registered on 10.04.2002 therefore there is no concealment on the document i.e agreement to sell dated 07.02.2003. Besides this the previous suit which has been decided by the Court of Smt Mandeep Kaur, the then Ld. Addl. Sessions Judge, Kapurthala, vide judgment and decree dated 23.01...2014 the suit of the plaintiff was decreed in appeal filed by him and the Court had allowed the relief of performance of contract i.e execution of sale deed in favour of appellant. It is relevant to mention here that the Hon’ble Addl. District Judge, Kapurthala has not allowed the execution of sale deed qua the same property which is subject matter in the present case as in the agreement to sell dated 13.06.2002 and it is with regard to property comprised in revenue estate of village Chuharwal. This document is definitely different from the one relied upon by the defendant. Since the decree for execution for sale deed in favour of the plaintiff in the suit led by Ujjagar Singh ordered by the Court of Smt Mandeep Kaur, the then Ld. Addl. District Judge, Kapurthala for the property than the property involved

in the present case and the agreement to sell is also different from the one which has been relied upon by the plaintiff in previous suit is different one and therefore without commenting upon the merits of the present case this Court is of the considered view that the matter in issue is not directly and substantially in issue in the previously instituted suit between the same parties nor between the parties under whom they now claim and the suit property and to sell both are different in each case therefore, the provision of Section 10 CPC is not relevant in the present case and therefore the same is hereby dismissed being devoid of any merits.”

4. A perusal of the above leaves no doubt, in any manner, that there is no irregularity committed by the Court below in dismissing the application under Section 10 read with Section 151 CPC, filed by the petitioner. Even otherwise, I would hasten to add here that the petitioner has been throughout watching the proceedings of the trial in question as a fence sitter. It is only at fag end that an application, *ibid*, was filed. While on the other hand, in the connected matter, not only the suit was decreed, but thereafter the first appeal too has been adjudicated and now the matter is pending by way of second appeal before this Court. Prima facie, application under Section 10 CPC filed by the petitioner seems to be a collateral and dilatory tactic merely to delay the trial before the Court below.

5. In the parting I may hasten to add here that perusal of memo of parties as per Annexure P-7 appended with the revision petition and the memo of parties in regular second appeal arising out of earlier suit (though not annexed with civil revision but tendered in course of hearing), would reveal that plaintiff Ujagar Singh in the suit in hand is not a party in the earlier suit and neither are defendants No.1 to 17 in the earlier suit are party to the suit in question and to that extent even first argument of learned counsel for the petitioner that parties are same, on the face of it, seems to be incorrect.

6. In view of the above, no ground for interference by this Court is made out.

7. Dismissed.

MARCH 18, 2021
Shalini/ Jiten

(ARUN MONGA)
JUDGE

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