

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

CR-1564-2020 (O&M)

Date of decision: 16.12.2022

Ram Kumar

....Petitioner

Versus

Pritam Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rakesh Gupta, Advocate for the petitioner
Mr. Sanjiv Gupta, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. An application filed under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to stay the proceedings in a subsequently instituted suit, has been dismissed. This revision petition, under Article 227 of the Constitution of India, has been filed, challenging the correctness of the aforesaid order dated 06.01.2020. A previous suit for partition of the joint land measuring 3 kanals and 8 marlas was filed, in which a preliminary decree has already been passed. Against the preliminary decree, an appeal preferred by the plaintiff's wife is pending. In the aforesaid proceedings, the trial court culled out the following issues:-

“1. Whether the predecessor in interest of plaintiffs Khila Ram was owner of 6-2/3 marlas land which he purchased by virtue of sale deed no.6088/1 dated 1.1.1991 and now the plaintiffs are entitled to separate possession by way of partition on their share? OPP.

2. Whether the suit is not maintainable? OPD

3. Whether the plaintiffs have no locus standi and cause of action to file the present

suit?OPD.

4. *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.*

5. *Whether the suit is time barred? OPD.*

6. *Whether the suit is bad for non-joinder of necessary parties? OPD.*

7. *Relief.”*

2. The plaintiff (respondent herein) filed a suit for decree of declaration that the sale deed no. 3948 dated 11.09.2008 executed by defendant no.7 in favour of defendant no. 6 is illegal as it pertains to a passage which was carved out by the developer while developing the colony. In the subsequent suit, the plaintiff has already concluded his evidence. As already noticed, the application under Section 10 CPC has been dismissed by the trial court.

3. Heard the learned counsel representing the parties and with their able assistance perused the paperbook. Sh. Gupta, learned counsel representing the appellant contends that once the share of the petitioner (defendant no.4 in the previous suit) has been determined, a fresh suit by the plaintiff is not maintainable. He submits that the trial court has erred in dismissing the application under Section 10 CPC.

4. On the other hand, learned counsel representing the plaintiff while drawing the attention of the Court to the issues which have been extracted above, contends that the basic requirement of Section 10 CPC is not fulfilled as the sale of the passage was not a matter which was directly and substantially in issue in the previously instituted suit.

5. Having heard the learned counsel representing the parties,

this Court is of the opinion that the petitioner has failed to make out a case for interference in the exercise of Court's jurisdiction under Article 227 of the Constitution of India. The provisions of Section 10 CPC are categoric. A subsequently instituted suit can be stayed only if the matter directly and substantially in issue in the former and the subsequent suit is the same and is pending between the same parties or their representatives. It is evident from the reading of the issues, in the former suit, extracted above, that the matter directly and substantially in issue in both the suits is not the same. Hence, no ground to interfere is made out.

6. Dismissed.

7. Needless to observe that the observations made by this Court while disposing of the revision petition shall not be construed as final expression of opinion on the merits of the case.

8. All the pending miscellaneous applications, if any, are also disposed of.

16.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE