

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

CR-4159-2019

Date of decision : 16.08.2022

Narender Kaur

...Petitioner

Vs.

Darshan Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Saurabh Garg, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner (plaintiff) is aggrieved against the order dated 08.04.2019 (Annexure P-11), whereby Civil Judge (Junior Division), Kaithal has stayed the proceedings in her civil suit bearing No.307/2016 (Annexure P-4) by exercising jurisdiction under Section 10 Code of Civil Procedure.

Briefly, the facts of the case are that petitioner/plaintiff initially filed a suit bearing No.659/2015 against Darshan Singh, her father-in-law and sought a declaration that the property measuring 107 kanal in his name is co-parcenary, therefore, plaintiff being widow of his pre-deceased son-Bhagwant Singh is entitled to the share along with the other co-parceners (sons of Darshan Singh). As per the pleadings, defendant had inherited the property from his father-Amar Singh, who had expired on 01.02.1971 and apart from this, some more land was purchased by him from the joint hindu family funds and her husband Bhagwant Singh had $\frac{1}{4}$ th share in the said suit property. Bhagwant Singh had died issueless on 23.12.2008, so his share in the suit property would devolve upon the plaintiff. The defendant was earlier paying maintenance to the plaintiff, but later he refused to give maintenance to the

plaintiff and on this cause of action, she filed a suit seeking a declaration that the nature of the suit property is ancestral and further she has a right of inheritance to the extent of 1/4th share.

The suit is being contested by the other side, wherein various objections have been raised and on merits, it is pleaded that the plaintiff being daughter-in-law is harassing the defendant, who further described the nature of property as a self acquired property. While denying the other averments in the plaint, it was prayed that the suit be dismissed.

On 26.02.2016, the trial Court ordered status quo while dealing with the plaintiff's application under Order 39 Rules 1 and 2 CPC, but the said direction was violated, as the defendant transferred the property on 29.02.2016 in favour of his other sons. Based upon this cause of action, plaintiff brought present suit bearing No.307/2016 (Annexure P-4), wherein she sought declaration to challenge the transfer of suit property in favour of defendant-Tirlok Singh son of Darshan Singh.

Upon notice, the defendant appeared and contested the suit and also filed an application under Section 10 CPC for staying the suit proceedings as according to him, the issues involved in this suit particularly the issue relating to nature of suit property are directly contained in the previous suit No.659/2015 filed by plaintiff against Darshan Singh, under whom defendant is claiming his right in the suit property. The application was contested by plaintiff, but the Civil Judge (Junior Division), Kaithal vide order dated 08.04.2019 accepted the same and stayed the suit proceedings by holding that the issues involved in this subsequent suit are directly and substantially the same as involved in the previous suit.

Learned counsel has argued that the cause of action in both the suits are different, therefore, the impugned order is not sustainable as in the earlier suit, there is no challenge to the transfer deed made by Darshan Singh in favour of his son Tirlok Singh. He submits that even during pendency of the suits, Darshan Singh had expired and his other sons have also propounded a Will dated 07.05.2010 and the third suit has also been filed by the plaintiff to challenge the said Will. According to him, in the said suit also, a similar application is filed, but the same is pending. He prays that the impugned order is bad in law and therefore, deserve to be set aside. In support of his prayer, he has relied upon judgment of Hon'ble the Supreme Court passed in "*Aspi Jal and another Vs. Khushroo Rustom Dadyburjor*", 2013 (2) Civil Court Cases 0840.

After hearing learned counsel and considering the pleadings contained in both the suits, this Court finds that the entire claim of the plaintiff is founded upon the nature of property, which is claimed to be Joint Hindu Family property and the prayer made in the subsequent suit in this regard echoes the voice of the prayer contained in the earlier suit. Though allegedly, in violation of interim injunction order passed in first suit, the defendant-Darshan Singh had disposed of the property in favour of his another son, but it cannot be construed as a materially different cause of action, at least relating to nature of property (co-parcenary) and on this issue, the second suit would be dependent upon the findings in the first suit.

A close analysis of Section 10 CPC makes it absolutely clear that in case the matter in issue involved in subsequent suit is also directly and substantially pending adjudication in the same court or any other court having

jurisdiction to grant the said relief, the proceedings of the subsequent suit are to be kept in abeyance to avoid conflicting verdicts on the same issue. During the course of hearing, it is also not disputed by learned counsel that the first suit filed by the petitioner is at the final stage and is fixed for final arguments. A perusal of the impugned order shows that the Civil Judge (Junior Division) Kaithal has carefully examined the pleadings of the parties in both the suits, before accepting the application of the defendants, and the same is based upon proper appreciation of material and law on the subject. The citation relied upon by learned counsel is not applicable to the set of facts and circumstances of the present case as in the said case, dispute between the landlord and tenant led to filing of three eviction petitions, which were based upon three different grounds of arrears of rent pertaining to different periods.

Thus, this Court has no hesitation in holding that the impugned order does not suffer from any illegality or impropriety and no interference is called for by exercising the revisional jurisdiction.

Dismissed.

(MANOJ BAJAJ)
JUDGE

16.08.2022

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No