

Sr. No.130

Date of Decision : March 19, 2024

VS.

Jaswant Singh Respondent

* * *

Present : Mr. Charitr Kadyan, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 07.10.2023 (Annexure P-1), passed by learned Additional Civil Judge (Senior Division), Garhshankar (hereinafter referred to as – Trial Court), dismissing application filed by the petitioner/defendant under Section 10 CPC for stay of proceedings in the subsequent suit i.e. **Civil Suit No.403 of 2018** titled **Jaswant Singh vs. Amrik Singh** till final decision of **RSA No.2334 of 2014**, arising out of earlier suit i.e. **Civil Suit No.56 of 1998**, relating to mandatory injunction ordering petitioner/defendant to restore the common passage from the same property.

2. The brief facts, necessary for disposal of the present revision petition, are that prior to the present suit i.e. **Civil Suit No.403 of 2018**, filed by Jaswant Singh, an earlier suit was also filed by Joginder Singh against

MONIKA Hari Singh and others with respect to some different land and on different
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integrity of this document

cause of action. In that suit, there were total nine defendants including Jagat Singh whose legal representatives were brought on record through him. Plaintiff was one of his legal heirs. In the earlier suit, prayer was for mandatory injunction regarding restoration of passage marked by letters ABCDEF and GHIJKLMN, as detailed in the plaint. In the present suit, mandatory injunction has been sought to restore the common passage by way of removal of the gate marked as AB in the site plan and not to create any such obstruction in the user of the same in future.

3. Learned counsel for the petitioner has argued that the earlier suit was filed for mandatory injunction, which was decreed. Appeal against the said judgment and decree was filed and the same was dismissed. Regular Second Appeal preferred against the order of dismissal is still pending before this Court, in which notice of motion has been issued. It has further been submitted that during pendency of appeal, in continuation of proceedings, now another suit has been filed for permanent mandatory injunction. Since the subject matter of earlier suit and instant suit is the same, so, the subsequent suit is required to be stayed till disposal of Regular Second Appeal, filed in the earlier suit.

4. I have heard submissions of learned counsel for the petitioner and perused the case file.

5. The previous suit was filed by Joginder Singh son of Ram Chand against Hari Singh and others for mandatory injunction for ordering the defendants to restore the site of rasta, as detailed in the head note of the plaint, to its original position, by removing all sort of obstructions caused by them in the shape of construction etc. or for allowing the plaintiff to remove

all the obstructions at the costs recoverable from the defendants. In that suit, petitioner was not sued in personal capacity but through Jagat Singh (since deceased) being his legal heir. Petitioner Jaswant Singh and other legal heirs of Jagat Singh were brought on record as legal heir of Jagat Singh. The instant suit has been filed by Jaswant Singh son of Jagat Singh against the petitioner Amrik Singh. The parties in both suits are different and the present suit is for permanent mandatory injunction directing the defendant to restore the common passage by way of removal of the gate and not to create any such obstruction in the user of the same in future and in the alternative, ordering the defendant to restore the common passage marked as ABCD shown in red colour in the site plan by way of removal of the door fringe fixed by the defendant at the gate marked as AB in the site plan.

6. In view of the above discussion, since parties in both the suits are different and the issue involved is also different, there is no need to stay the proceedings in the subsequent suit. Accordingly, I do not find any ground to interfere in the well reasoned speaking order passed by the learned Trial Court.

7. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed in limine.

8. Pending applications, if any, shall stand disposed of along with this judgment.

March 19, 2024 (GURBIR SINGH)
monika JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.