

**CR No.2379 of 2024****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****CR No.2379 of 2024 (O&M)****Reserved on : 01.05.2024****Pronounced on : 06.05.2024**

Kabal Singh

....Petitioner

VERSUS

Gopal Chand and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. C. M. Munjal, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been filed by the defendant No.1-petitioner challenging the order dated 20.02.2024 passed by the Trial Court whereby the application filed by the defendant No.1-petitioner under Section 10 of the Code of Civil Procedure, 1908 for stay of the suit was dismissed.

2. The brief facts relevant to the present case are that the plaintiff-respondents filed a suit for permanent injunction regarding the suit land falling in Khasra Nos.16//6/1/2 (1-1) and 6//6/1/1 (2-15). The defendant No.1-petitioner filed an application for stay of the suit under Section 10 CPC averring that he had earlier filed a civil suit seeking possession against present plaintiff-respondents qua land bearing Khasra No.16//6/1 (0-6). The said civil suit was dismissed by the Trial Court vide judgment and decree dated 23.02.2016 and the appeal preferred against the said judgment and decree was also dismissed by the First Appellate Court vide judgment and decree dated 11.07.2019 and now a regular second appeal filed by the

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defendant No.1-petitioner was pending in the Hon'ble High Court. It was submitted that the pendency of the regular second appeal was a continuation of the earlier civil suit titled 'Kabal Singh Vs. Gopal Chand etc.' and therefore as the controversy involved in the present suit was directly and substantially the issue in the earlier suit, the regular second appeal of which was pending before the Hon'ble High Court, the same operates as a bar to the continuation of the present suit. The plaintiff-respondents in their reply to the application submitted that the nature of both the suits was different. The plaintiff-respondents had filed the present civil suit pertaining to land measuring 3K-6M comprised in Khasra Nos.16//6/1/2 (1-1) and 6//6/1/1 (2-15) whereas the earlier civil suit filed by the defendant No.1-petitioner pertained to land comprised in Khasra No.16//6/1/3 (0-6) and that both the civil suits pertained to different properties between different parties. The Trial Court vide order impugned dated 20.02.2024 dismissed the said application. Hence, the present civil revision petition.

3. Learned counsel for the defendant No.1-petitioner would contend that the issue involved in both the suits was the same and since the regular second appeal of the earlier civil suit was pending in this Court, the proceedings in the subsequent civil suit should have been stayed by the Trial Court.

4. Heard learned counsel for the defendant No.1-petitioner.

5. Section 10 CPC, which is relevant for the purpose, reads as follows :

“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

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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 suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action.”

From a plain reading of the aforesaid provision it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 of the Code i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two



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courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding [see **Aspi Jal and Another vs. Khushroo Rustom Dadyburjor, (2013) 4 SCC 333**].

6. In **National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara [(2005) 2 SCC 256]** the Supreme Court held that :

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted

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suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”

7. Viewed in the light of the provision of law and the settled law, there is no illegality or irregularity in the impugned order. Both the civil suits operate in different spheres. The subject-matter of the two proceedings is entirely distinct and different. While the first civil suit was for possession the subsequent civil suit is for permanent injunction. The land involved in the first civil suit is comprised in Khasra No.16//6/1/3 while the land involved in the subsequent civil suit is comprised in Khasra Nos.16//6/1/2 and 6//6/1/1. The parties in both the civil suits are also not the same and the cause of action of the two civil suits is distinct and different. No other point was argued.

8. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.05.2024

jk

(ALKA SARIN)**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO