



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR-2901-2024
Reserved on : 19.09.2024
Pronounced on : 03.12.2024

Dheeraj Gupta and another Petitioners

versus

Ritu Gupta and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Yashasvi Goyal, Advocate
for the petitioners.

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Abhishek Shukla, Advocate
for the respondents.

PANKAJ JAIN, J.

1. Plaintiff is in revision against order dated 22.02.2024 passed by Additional Civil Judge (Sr. Divn.), Panchkula whereby application filed by defendant under Section 10 CPC for stay of the suit which is subsequent one has been stayed.
2. Parties are related to each other. The dispute relates to residential house admittedly in the name of Veena Gupta, who has two sons namely Dheeraj Gupta and Neeraj Gupta. Neeraj Gupta died, leaving behind widow Ritu Gupta and two sons namely Tanush Gupta and Mourya Gupta. All filed suit seeking decree of declaration to the effect that they are owners in possession of 1/2 share in house No.12, Sector-8, Panchkula and sought decree of permanent injunction against Veena Gupta and Dheeraj Gupta from interfering in their peaceful



possession. It was claimed in the said suit that the house in question was purchased by Vijay Mahajan husband of Veena Gupta in the name of Veena Gupta after selling ancestral properties. In September 2006, an oral family settlement was arrived between the parties. Veena Gupta and Dheeraj Gupta alongwith Vijay Mahajan husband of Veena Gupta agreed that whole of the ground floor of house No.12, Sector 8, Panchkula shall remain in the possession of defendant No.2 and the first floor shall remain in possession of the plaintiffs i.e. family of the other son. Plaintiff No.1 alongwith her husband raised construction and constructed 3 BHK accommodation for the family. Husband of Ritu Gupta died on 16.09.2019. Vijay Mahajan also expired on 10.05.2022. Veena Gupta and Dheeraj Gupta are threatening family of Neeraj Gupta with forcible dispossession. On the basis of aforesaid pleadings, suit was filed. Civil Judge (Sr. Divn.), Panchkula vide order dated 29.05.2023 restrained Veena Gupta and Dheeraj Gupta from interfering in peaceful possession of the family of Neeraj Gupta.

3. Subsequent to the aforesaid suit, instant suit was filed by Dheeraj Gupta and Veena Gupta wherein they sought decree for mandatory injunction directing defendants to handover peaceful and vacant possession of part/portion of first floor of House No.12, Sector 8, Panchkula and also sought recovery of future mesne profit @ `50,000/- per month for illegal use of occupation of the premises in question from the date of institution of the suit till the delivery of vacant and physical possession.

4. In the subsequent suit, present application was filed under Section 10 CPC for stay of the previously instituted suit. Trial Court



allowed the application vide impugned order holding that final decision in the previously instituted suit will operate as *res judicata* in the subsequently instituted suit and thus, the subsequent suit was hit by principles of *res subjudice* and thus needs to be stayed in terms of Section 10 of the Code of Civil Procedure, 1908.

5. Learned counsel representing the petitioners has assailed the impugned order submitting that the two suits are based upon different cause of actions. The relief claimed in both the suits are entirely different. Section 10 applies only in cases where whole of the subject matter in both the suits is identical and thus merely for the reason, issue involved in the earlier suit is incidentally involved in the subsequent suit, section 10 would not be applicable. He relies upon ***Aspi Jal and another vs. Khushroo Rustom Dadyburjor, 2013(4) SCC 333, Rajinder Aggarwal and another v. M/s. K.R. Finmark Pvt. Ltd. 2019(3) RCR (Civil) 375, Smt. Savitri Devi vs. Megh Raj and another 2016(3) PLR 797 and Spice Communications Pvt. Ltd. vs. Lakhwinder Singh and ors. 2007(19) RCR (Civil) 573.***

6. *Per contra*, learned senior counsel representing the respondents has drawn attention of this Court to the plaints filed in both the suits to contend that in case the plaintiffs succeed in the previously instituted suit, the findings recorded therein would be binding on the subsequent suit and shall operate as *res judicata* and thus provisions as contained under Section 10 having been rightly invoked by the Court below. He relies upon ***Satish Chander Ahuja vs. Sneha Ahuja 2021(1) SCC 414*** and ***Aspi Jal and another vs. Khushroo Rustom Dadyburjor, 2013(4) SCC 333.*** He submits that living of a woman in household has



been fully explained by Supreme Court in the case of **Satish Chander Ahuja (supra)**. It is not necessary that the house must belong to the husband of the woman in domestic relationship and thus, the defendants having right to remain in possession of the suit property is not liable to pay mesne profits and thus, Trial Court has rightly stayed the subsequent suit. He further refers to ratio of law laid down by Supreme Court in the case of **Aspi Jal (supra)** to submit that the test for applicability of Section 10 of the Code is whether, final decision being reached in the previously instituted suit, such decision would operate as *res judicata* in the subsequent suit. The Trial Court applied the same test and found that the answer was in affirmative and thus rightly invoked Section 10 CPC to stay the subsequent suit.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. In order to appreciate the rival contentions, it would be apt to peruse Section 10 of the Code which reads as under:-

“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 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 ¹[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of ¹[India] established or continued by ²[the Central Government ³* * *.] and having like jurisdiction, or before ⁴[the Supreme Court].”

9. The import of the provision has been elaborately explained by Supreme Court in the case of **Aspi Jal (supra)**. Interestingly, both the



counsels rely thereupon. They have tried to read ratio of law laid down therein to their respective advantage.

10. In *National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara*, (2005) 2 SCC 256, Supreme Court observed as under:-

“xx xx xx

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 suit. The words "directly and substantially in issue" are used in contra-distinction 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 subject matter in both the proceedings is identical."

(emphasis supplied)

11. While explaining the aforesaid test and the situations wherein the same would not be applicable, Supreme Court in the case of

Dunlop India Limited v. A.A. Rahna & Anr., (2011) 5 SCC 778



observed as under:-

“XX XX XX

35. The arguments of Shri Nariman that the second set of rent control petitions should have been dismissed as barred by res judicata because the issue raised therein was directly and substantially similar to the one raised in the first set of rent control petitions does not merit acceptance for the simple reason that while in the first set of petitions, the respondents had sought eviction on the ground that the appellant had ceased to occupy the premises from June, 1998. In the second set of petitions, the period of non occupation commenced from September, 2001 and continued till the filing of the eviction petitions. That apart, the evidence produced in the first set of petitions was not found acceptable by the Appellate Authority because till 2.8.1999, the premises were found kept open and alive for operation. The Appellate Authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the second round, the appellant did not adduce any evidence worth the name to show that the premises were kept open or used from September, 2001 onwards. The Rent Controller took cognizance of the notice fixed on the front shutter of the building by A.K. Agarwal on 1.10.2001 that the company is a sick industrial company under the 1985 Act and operation has been suspended with effect from 1.10.2001; that no activity had been done in the premises with effect from 1.10.2001 and no evidence was produced to show attendance of the staff, payment of salary to the employees, payment of electricity bills from September, 2001 or that any commercial transaction was done from the suit premises. It is, thus, evident that even though the ground of eviction in the two sets of petitions was similar, the same were based on different causes. Therefore, the evidence produced by the parties in the second round was rightly treated as sufficient by the Rent Control Court and the Appellate Authority for recording a finding that the appellant had ceased to occupy the suit premises continuously for six months without any reasonable cause.

(Underlining ours)”



12. Relying upon the aforesaid observations, Supreme Court in the case of *Aspi Jal (supra)*, observed as under:-

“xx xx xx

The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously instituted suit”. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same.”

13. From the aforesaid reproduced observations made by Supreme Court, the following proposition can be culled:-

“(a) The purpose and objective underlying the doctrine of res subjudice as manifested in Section 10 of the Code is to prevent the Courts of current jurisdiction from entertaining and adjudicating upon two parallel *lis* in respect of same cause of action,



same subject matter and same relief. The intent is to avoid possibility of contradictory verdicts in respect of same dispute.

(b) The provision as contained under Section 10 of CPC is mandatory.

(c) Test for applicability of Section 10 of the Code is whether on a final decision being reached in a previously instituted suit, such decision would operate as res judicata in the subsequent suit.

(d) The question that needs to be adjudicated is whether the matter in issue is also directly and substantially in issue in previously instituted case.

(e) The Court in which the subsequent suit has been filed is prohibited from proceedings the trial of that suit, if the conditions laid down in Section 10 of the Code are satisfied.”

14. Applying the aforesaid test to the present case, this Court finds that at the heart of *lis* between the parties, lies their rights in the suit property. In previously instituted suit, plaintiffs seek decree of declaration to the effect that they are owners to the extent of 1/2 share. In the subsequent suit, plaintiff No.2 claimed herself to be absolute owner in possession of the suit property and asserts that (defendants i.e. plaintiffs in the previously instituted suit) are merely licencees, living in the portion of the suit property and are liable to be evicted and are also liable to pay mesne profits to continue in possession.

15. Mr. Mohunta is not in a position to dispute that in case in the previously instituted suit, the plaintiffs succeed and are able to get decree of declaration of being owners in exclusive possession of the portion of the suit property, they can neither be evicted nor can be saddled with payment of mesne profits. The matter in issue in both the



suits is thus, title of applicants in suit property. In case the applicants are held to be owners in possession of the part of the suit property as claimed by them in the previously instituted suit, the said finding would operate as *res judicata* in the subsequent suit. The same is bound to fail.

16. Present revision has been filed under Article 227 of the Constitution of India. While explaining the scope of Article 227 and supervisory jurisdiction conferred on High Court, Supreme Court in the case of **Sadhana Lodh vs. National Insurance Company Limited and others, (2003) 3 SCC 524** observed as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision.”

17. While dealing with revisional proceedings arising out of order deciding application seeking amendment of pleadings, Apex Court in the case of **M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd., (2001) 8 SCC 97** dealt with the scope of Article 227 of Constitution of India observing as under:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and



to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.

7. This Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd vs. Ramtahel Ramanand and Ors. [AIR 1972 SC 1598]** in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case **Waryam Singh & Anr. vs. Amarnath & Anr. [1954 SCR 565]**. This court in **Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Anr. [AIR 1975 SC 1297]** has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

18. Aforesaid dictum has been reiterated by Apex Court in the

case of **M/s Garment Craft vs. Prakash Chand Goel, (2022)4 SCC**



181 observing as under:

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [1*] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in ***Estralla Rubber v. Dass Estate (P) Ltd. (2001) 8 SCC 97*** has observed:-

[1* *Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 217*]

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this



power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

19. ***M/s Garment Craft's case*** (supra) was further relied upon in the case of **Ibrat Faizan vs. Omaxe Buildhome Private Limited, 2022 AIR Supreme Court 2363** observing as under :

"14. xxxx However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97***, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29***). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of



- the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”
20. Same is the ratio of law laid down in the case of **M/s Puri Investments vs. M/s Young Friends and Co. and others, 2022 (1) RCR (Rent) 311** wherein Apex Court held as under:
- “13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum’s decision was perverse and the manner in which such finding was arrived at was itself perverse.”
21. Thus, the scope of the revision under Article 227 of the Constitution is not to substitute the conclusions or to correct error of fact. While exercising jurisdiction under Article 227, this Court has to deal with the manner in which the Court below exercised jurisdiction rather than correctness of the order.
22. In view of above, this Court finds that the Trial Court rightly allowed the application filed under Section 10 of the Code of Civil Procedure, 1908 and stayed the subsequently filed suit being barred by doctrine of *res Sub Judice*.
23. Finding no merits in the present revision petition, the same is ordered to be dismissed.

03.12.2024

Dinesh

Whether speaking/reasoned :

Whether Reportable :

(PANKAJ JAIN)
JUDGE

Yes

Yes