



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

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CR-6311-2024

Date of Decision: 28.10.2024

Narain Singh

....Petitioner

Versus

Charanjit Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Pankaj Maini, Advocate
for the petitioner.

VIKAS SURI, J. (Oral)

1. This revision petition under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner (Narain Singh) for setting aside order dated 18.09.2024 (Annexure P-9), whereby the application filed under Section 10 read with Section 151 CPC, to adjourn the matter on the ground of pendency of RSA No.2694 of 2022, has been dismissed.

2. The facts of the case in brief are, that the petitioner was the owner of House No.H-392, Phase-I, Sector 55, Mohali, and he had entered into an agreement to sell with Captain Parshotam Singh and his wife Surjit Kaur and had simultaneously executed Power of Attorney dated 04.03.2005 along with Will with regard to the said property. After receiving the full and final amount of sale consideration, vacant possession of the property in



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question was also handed over at the time of execution of General Power of Attorney. Captain Parshotam Singh and Surjit Kaur had rented out the house in question to respondent No.2 herein i.e. Swaran Kaur, vide rent agreement dated 09.10.2006, at a monthly rent of Rs.3800/-, who occupied the same as tenant. The house in question was thereafter transferred in the name of Charanjit Kaur (respondent No.1), who is the married daughter of Captain Parshotam Singh and his wife Surjit Kaur, by way of sale deed dated 23.04.2008. The said Charanjit Kaur having stepped into the shoes of the landlord, i.e. along with her parents, filed a rent petition seeking ejectment of Swaran Kaur and her brother Narain Singh, respondent No.2 and petitioner herein, respectively, from the house in question on the ground of non-payment of rent and sub-letting. The said ejectment petition was registered and numbered as Rent Petition No.24 of 23.05.2008. During the pendency of the said rent petition, the petitioner filed a suit for declaration to the effect that he is owner in possession of the house in question and further for declaration that the sale deed dated 23.04.2008 is a consequence of fraud played upon him and is without consideration, thus is null and void. The Rent Controller vide its order dated 03.10.2013 (Annexure P-3) (at Pages 24 to 37), allowed the supra rent petition and ordered ejectment of the respondents. With regard to the arrears of rent, a finding has been returned that respondent No.2 (Swaran Kaur) is in arrears of rent from 01.02.2007 at the rate of Rs.3800/- per month. The appeal preferred against the said order dated 03.10.2013 was dismissed by the Appellate Authority. The matter was not carried to this Court by filing a revision under the Rent Act and the said orders, thus attained finality.



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3. The suit instituted by the petitioner on 09.04.2011 was dismissed vide judgment and decree dated 18.02.2016 and the appeal preferred thereagainst was also dismissed by the first Appellate Court vide judgment and decree dated 13.09.2022. The petitioner preferred regular second appeal to this Court, which came to be registered as RSA-2694-2022, and is stated to be still pending. By way of an interim order dated 23.01.2023, passed therein, in favour of the petitioner (appellant therein), it was ordered that third party rights should not be created. In the meanwhile, i.e., before passing of the aforesaid judgment and decree dated 18.02.2016, possession of the house in question stood handed over to the landlord Charanjit Kaur, through the process of Court in execution proceedings pertaining to the ejectment order dated 03.10.2013, as upheld by the learned Appellate Authority.

4. Thereafter, respondent No.1-Charanjit Kaur, filed a suit for recovery of Rs.1,64,424/- as arrears of rent from 01.10.2011 to 30.09.2014 along with interest thereon at the rate of 6% per annum. The aforesaid suit was instituted on 01.10.2014, which came to be assigned CIS No.CS/568/2014. The petitioner filed an application under Section 10 read with Section 151 CPC praying for adjourning the matter to await the decision in RSA-2694-2022. The said application was dismissed vide impugned order dated 18.09.2024 (Annexure P-9). Aggrieved by the aforesaid order, the petitioner has challenged the same by way of the instant petition.

5. Heard learned counsel for the petitioner and perused the record with his able assistance.

6. Learned counsel for the petitioner has vehemently argued that the



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validity of sale deed dated 23.04.2008, goes to the root of the matter and as such, the suit for recovery of arrears of rent ought to have been stayed.

7. The argument advanced on behalf of the petitioner, at first blush, sounds appealing but when tested in the light of the ratio of judicial precedents and the facts of the present case, the same is liable to be rejected for the reasons enumerated hereinafter.

8. It is not disputed that an ejectment order had been passed against the petitioner and his sister, respondent No.2, which has since attained finality and possession of the house in question was also handed over to the landlord in Rent Petition No.24 of 23.05.2008, through the process of Court in execution proceedings. The Rent Controller had returned a categorical finding that Swaran Kaur (tenant) was in arrears of rent at the rate of Rs.3800/- per month from 01.02.2007. The said findings have attained finality. It is also noteworthy that in the said rent proceedings, Swaran Kaur had not only failed to lead any evidence to prove the fact that the house in question belonged to her brother, i.e. the petitioner herein, but also did not step into the witness box to support the stand set up by her in the written statement. On the contrary, as noticed by the learned Rent Controller in the ejectment order dated 03.10.2013, Swaran Kaur had admitted to be residing in the property in question without paying any rent.

9. The suit for recovery, which is sought to be stayed, has its genesis, in the decision of the Rent Controller, which has since attained finality in the landlord-tenant dispute.

10. It would be opposite to refer to the provision of Section 10 CPC,



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which reads thus:

“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 India have 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.”

11. The aforesaid provision was discussed threadbare in the decision rendered by the Hon’ble Supreme Court in ***National Institute of Mental Health and Neuro Sciences vs. C.Parameshwara, (2005) 2 SCC 256***. The object underlying Section 10 CPC was considered therein and it was held that 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 were identified and it was further held that the words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. The relevant portion of the said judgment is extracted hereunder:

“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



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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 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.

9. In the present case, the appellant had initiated the disciplinary proceedings against the respondent herein on charges of misappropriation of drugs. In the said disciplinary proceedings, the respondent was found guilty of alleged misappropriation of drugs. On the basis of the findings arrived at in the disciplinary enquiry, the respondent herein was removed. The extent of the loss suffered by the appellant, as found in the disciplinary enquiry, was Rs 1,79,668.46. Being aggrieved by the order of dismissal, the respondent moved the Labour Court. On 29-10-2001, the Labour Court passed an award setting aside the order of removal dated 12-4-1993. Being aggrieved, the appellant instituted Writ Petition No. 24348 of 2002. The appellant has also instituted Civil Suit No. 1732 of 1995 for recovery of the loss suffered by it to the tune of Rs 1,79,668.46 with interest. Thus, as can be seen from the above facts, both the proceedings operated in different spheres. The subject-matter of the two proceedings is entirely distinct and different. The cause of action of the two proceedings is distinct and



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different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said Writ Petition No. 24348 of 2002, the management has challenged the award of the Labour Court granting reinstatement of the respondent.”

12. The aforesaid judgment was followed by the two Judges Bench of the Apex Court in *Aspi Jal and another vs. Khushroo Rustam Dadyburjor*, (2013) 4 SCC 333. The principle of law enunciated in the aforesaid decision is extracted hereunder:

“9. Section 10 of the Code which is relevant for the purpose reads as follows:

x x x x x x

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 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 courts in respect of the same relief and is aimed to protect the



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defendant from multiplicity of proceeding.

10. The view which we have taken finds support from a decision of this Court in *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara* in which it has been held as follows: (SCC pp. 259-60, para 8)

“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 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.”

11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have



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been instituted is competent to grant the relief claimed in the third suit. 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 a 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 the 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 a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third



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suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case.”

13. In the present case, applying the principle of law laid down by the Apex Court in the above decisions, it is required to be considered whether challenge to the sale deed dated 23.04.2008 would have a material effect so as to operate as *res judicata* in a suit for recovery of arrears of rent.

14. It is well settled that under the East Punjab Urban Rent Restriction Act, 1949, it is not necessary for a landlord to be the owner of the property. In Rent Petition bearing No.24 dated 23.05.2008, it has already been conclusively held that the rent agreement dated 09.10.2006 had been executed with Captain Parshotam Singh and his wife Surjit Kaur, i.e. the parents of Charanjit Kaur (respondent No.1), who has stepped into their shoes on execution of the sale deed dated 23.04.2008. The said adjudication has attained finality and is not subject to challenge in the suit instituted in the year 2011, which was dismissed by the trial Court as well as the First Appellate Court and the regular second appeal arising therefrom is pending in this Court. It is conceded that there is no stay in the said regular second appeal and therefore, there is no covenant to the operation of the judgments and decree passed by the Courts below in the said matter.

15. In view of the aforesaid discussion, I do not find any illegality or perversity in the impugned order dated 18.09.2024 (Annexure P-9) warranting interference.



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16. Accordingly, the present revision petition, being devoid of merit, is dismissed.

October 28, 2024
Varinder

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No