



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

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CR No.562 of 2025 (O&M)
Date of decision: 03.02.2025

Narinder Kumar @ Nikku Ram

...Petitioner

V/s

Usha Rani and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Shehbaz Thind, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 10.01.2025 (Annexure P-6) passed by the Court of learned Civil Judge (Sr. Divn.), Ludhiana, vide which the application filed by the petitioner under Section 10 of the Code of Civil Procedure, 1908 (for short the "CPC") was dismissed.

2. The facts, as emanating from the petition, are that a civil suit (Annexure P-1) was filed by the petitioner for declaration to the effect that the petitioner/plaintiff was the exclusive owner in possession of House No.8808, measuring 210 sq. yds. (fully described in the plaint) situated at Haibowal Kalan, New Vijay Nagar, Street No.2, Ludhiana (hereinafter referred to as the "suit property") on the basis of family arrangement dated 21.12.1994 entered into between the mother of the plaintiff namely Bharto Devi with the plaintiff and the defendants. Further declaration that Mutation No.43190 with regard to the suit property was illegal, fraudulent and against the family arrangement dated 21.12.1994 and that the entries in the *Jamabandi* on the basis of



Mutation No.43190 were also illegal, null and void. This suit came to be partly decreed vide judgment and decree dated 20.11.2023 (Annexure P-2) passed by the Court of learned Civil Judge (Jr. Divn.), Ludhiana. A decree for permanent injunction was passed restraining the respondents-defendants from interfering in the peaceful possession of the petitioner/plaintiff over the suit property or from dispossessing him from the suit property forcibly except by following the due course of law. However, the relief of declaration was declined. An appeal (Annexure P-3) was filed against the said judgment and decree and the same is stated to be pending. Thereafter, the respondents-defendants No.1 and 2 filed a suit for possession of the same property against the present petitioner and defendant No.3(Raj Kumar). An application (Annexure P-5) under Section 10 CPC was moved by the petitioner for staying of the trial of the subsequent suit i.e. Civil Suit No.748 of 2024 which has been dismissed by way of the impugned order.

3. I have heard learned counsel for the petitioner.

4. Learned counsel for the petitioner has vehemently submitted that the impugned order is not sustainable. He submits that if the trial of the suit filed by respondents No.1 and 2 is not stayed, there is likelihood of a contradictory finding being returned by the trial Court, which will affect the decision of the appeal filed by the petitioner against the judgment and decree dated 20.11.2023.

5. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit.

6. Section 10 CPC deals with stay of suit and lays down 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 (India) have jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by and having like jurisdiction, or before [the Supreme Court].

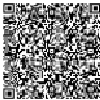
Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action”.

7. The object underlying Section 10 CPC is to prevent Courts of concurrent jurisdiction for simultaneously trying two parallel suits in respect of the same matter in issue. First of all, the suit filed by the petitioner for declaration and permanent injunction, which was partly decreed giving a right of injunction the defendants from interfering in the possession of the petitioner over the suit property except in due course of law. It, therefore, means that the defendants can avail remedies in accordance with law. In the considered opinion of this Court, the said remedy would include the filing of a suit for possession.

8. Coming further, Section 10 deals with two identical suits, whereas in the present case, one suit already stands decided and an appeal is pending. Though appeal is a continuation of the suit, Section 10 cannot stretch to mean that even if an appeal is pending, a subsequent suit cannot be filed. Under no circumstance, can it be suggested that no further suit can be filed by the respondents till the judgment and decree dated 20.11.2023 (Annexure P-2) attains finality. The trial Court also rightly noticed that the relief regarding declaration had been rejected by the trial Court and, therefore, the Court could not stay the proceedings of the suit filed by the respondents, which was for possession. The trial Court rightly observed that even though the parties and the properties in both suits were the same, the relief claimed was different. In ***Surinder Singh vs. Major Teja Singh Mansahia (P&H)***



1994(1) RRR 446, followed by a coordinate Bench of this Court in the case of *Rajinder Aggarwal and another vs. M/s K.R. Finmark Pvt. Ltd.*, 2019(3) RCR (Civil) 375 (Law Finder Doc Id # 1445140), it was held that the primary object of Section 10 CPC is to prevent the Courts of concurrent jurisdiction from simultaneously adjudicating upon the same dispute. The Legislature introduced this provision so as to ensure that the time of Courts is not unnecessarily wasted. It was held that it must be established that the suits are between the same parties or their successors and the matter in issue in the later suit is directly and substantially in issue in the earlier suit. Now, coming back again to the present case, no doubt, parties and properties, as has been noticed above also, are the same. However, in the suit filed by the petitioner-plaintiff, the relief sought was for declaration and permanent injunction, whereas the relief sought in the later suit was for possession. It cannot be said with surety that the eventual decision in the previous suit (which in any case stands dismissed as of now) would act as *res judicata* in the later suit or not. To the mind of this Court, it would not operate as *res judicata*, for the relief sought in both the suits is different. Still further, as noticed in the preceding paragraph also, a party cannot be expected to wait endlessly for a decision of a *lis* and primarily, Section 10 would apply if suits are pending before a Court of concurrent jurisdiction. Still further, as already noticed, even the injunction issued in favour of the petitioner-plaintiff was that he would not be dispossessed from the disputed property except in accordance with law. Under the circumstances, the trial Court, in the considered opinion of this Court, did not commit any illegality by rejecting the application moved by the petitioner-plaintiff under Section 10 CPC for staying of the subsequent suit.



9. In view of the aforesaid facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

February 03, 2025
vcgarg

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