

129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-983-2021(O&M)
Date of decision : 18.03.2025

Pargat Singh

..... Petitioner

versus

Darshan Kaur & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Amit Arora, Advocate for respondent No.1.

PANKAJ JAIN, J. (ORAL)

1 Challenge is to order dated 02.04.2021 (Annexure P-6) passed by Civil Judge (Junior Division), Tarn Taran whereby application filed by defendant No.1 under Section 10 CPC seeking stay of the subsequent suit has been dismissed.

2 Petitioner-applicant filed suit seeking decree of possession by way of specific performance pleading agreement to sell dated 25.08.2020 executed in his favour by Surinder Kaur wife of Davinder Singh. In the said suit Darshan Kaur wife of Gajjan Singh was also impleaded as defendant No.2. In the plaint filed in the earlier suit, pleadings related to defendant No.2 read as under :-

“9. That in the last week of September 2020, the defendant No. 2 Darshan Kaur and her husband Gajjan Singh openly stated that they have purchased the suit land from Surinder Kaur, thereafter the plaintiff inquired the matter from office of Joint

Sub Registrar Naushehhra Pannuan and from there the plaintiff came to know that the defendant No.1 has executed the registered sale deed of the suit land on 23.09.2020 in favour of defendant No.2. The registered sale deed dated 23.09.2020 is executed by the defendant No. 1 in violation of the terms and conditions of agreement to sell dated 25.08.2020, the defendant No.1 with malafide intention sold the suit land to defendant No. 2 which is illegal, void document and does not pass any title in favour of defendant No.2. The defendant No 2 was having full knowledge regarding the agreement to sell dated 25.08.2020 in respect of the suit-land, executed by defendant No. 1 in favour of the plaintiff, as both the plaintiff and defendant No.2 are co-villagers as such the sale deed dated 23.08 2020 is liable to be set aside by this Hon'ble court. The above said execution of sale deed by defendant No. 1 in favour of defendant No.2 gave cause of action to file the present suit before the date of execution of the sale deed mentioned in the agreement to sell in question, Thus, the defendant No. 1 has miserably failed to perform his part of the contract and thus committed breach of the contract as he has not executed any sale deed in favour of the plaintiff till today as per the terms and conditions of the agreement to sell. Thus the plaintiff is legally entitled to a decree for Possession by way of Specific Performance in respect of the suit property on the basis of agreement to sell in question & the defendant is under legal obligation to perform his part of the contract and to do all the acts necessary to put the plaintiff in possession of the suit land and to execute & registered a transfer deed in his favour.

10. That in case the Hon'ble court comes to this conclusion that the plaintiff is not legally entitled to a decree for specific performance, then in the alternative the plaintiff brings a suit

for Recovery of Rs.40,00,000/- (Rs. Forty lakhs only) [Rs.29,81,000/-Rs.05 Lakh+ Rs.15,19,000/- i.e. Rs 40,00,000/-] i.e. Rs. 29,81,000/- paid as earnest/advance sale consideration by the plaintiff to the defendant No.1 at different occasions out of which Rs.5 Lakh have been returned by the defendant No.2 in the account of, the plaintiff and Rs.15,19,000/-as stipulated, damages alongwith interest including pendent-lite and] future interest at the rate of 18% PA till the date of actual realization of amount in full, although the damages are not adequate relief in suit for specific performance in respect of land cases.”

3 Instant suit has been filed subsequently by Darshan Kaur wife of Gajjan Singh i.e. respondent No.1 impleading the petitioner as defendant No.1 and respondent No.2 as proforma defendant No.2. In the present suit the plaintiff-respondent No.1 prays for decree of permanent injunction to the effect that the defendant-petitioner be restrained from making any sort of interference in the possession of the plaintiff over the suit land.

4 Admittedly both the suits pertain to the same land. Petitioner who has been arraigned as defendant No.1 in the subsequent suit filed instant application under Section 10 CPC referring to the earlier suit filed by him and prayed that the subsequent suit filed by plaintiff-respondent No.1 being hit by principle of *res sub judice* be stayed. The application filed by the petitioner has been dismissed by the Trial Court holding that the reliefs claimed in both the suits are different and thus provisions as contained under Section 10 CPC are not attracted.

5 Learned counsel for petitioner-defendant No.1 while assailing the impugned order passed by the Trial Court submits that the Trial Court

misdirected itself in dismissing the application filed under Section 10 CPC. The subject matter in both the suits is same. Relief claimed by the parties in both the suits is identical. The issue substantially and directly involved in the earlier suit shall have direct bearing on the decision of the subsequent suit. Thus Trial Court ought to have stayed the subsequent suit filed by respondent No.1.

6 *Per contra* learned counsel for plaintiff-respondent No.1 submits that keeping in view the nature of the relief involved in both the suits, the Trial Court rightly non-suited the petitioner. Well reasoned order has been passed by the Trial Court which requires no interference.

7 I have heard learned counsel for the parties and have carefully perused the records of the case with their able assistance.

8 It will be apt to peruse the provision contained under Section 10 CPC. The same 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 [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.”

9 The provision was elaborately explained by Supreme Court in the case of *Aspi Jal and anr. Vs. Khushroo Rustom Dadyburjor (2013) 4 Supreme Court 333* to observe as under :-

“10. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara, (2005) 2 SCC 256 in which it has been held as follows:

“ 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 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 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. 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 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.”

10 In view of the aforesaid ratio the test for applicability of Section 10 CPC is :

Whether the final decision in the previously instituted suit, would operate as res-judicata in the subsequent suit?

11 As per Supreme Court when the matter in controversy is the same, it is immaterial as to what relief is claimed in the subsequent suit.

12 From the records, it is evident that even though subsequent suit has been filed seeking decree of permanent injunction yet the subject matter in both the suits is the same. In view of above, this Court finds that it will be in the interest of justice that both the suits be tried together.

13 Resultantly impugned order dated 02.04.2021 (Annexure P-6) passed by Civil Judge (Junior Division), Tarn Taran is modified to the extent that both the suits are ordered to be tried together in order to avoid conflicting decisions.

14 Revision stands disposed off accordingly.

18.03.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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