

(2001) 11 P&amp;H CK 0147

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Revision No. 3568 of 2001

Surjan

APPELLANT

Vs

Jangli Ram

RESPONDENT

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**Date of Decision:** Nov. 29, 2001**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 10
- Transfer of Property Act, 1882 - Section 53A

**Citation:** (2002) 2 CivCC 335 : (2002) 2 RCR(Civil) 198**Hon'ble Judges:** Bakhshish Kaur, J**Bench:** Single Bench

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**Judgement**

Bakhshish Kaur, J.

The Petitioner's prayer to stay the proceedings in Civil Suit No. 265-RT instituted on 13.9.1997/19.3.1997 u/s 10 of the CPC was declined by the learned Additional Civil Judge (Senior Division), Narnaul. Hence, this civil revision.

2. I have heard Mr. Ajay Jain, learned Counsel for the Petitioners and Mr. Prabodh Mittal, learned Counsel for the Respondents.

3. Jangli Ram, Mahada Ram and others had filed a suit for declaration that they are owners in possession of half share of the land measuring 44 kanals 9 marlas. as per jamabandi for the year 1994-95. The entries in the column of cultivation recorded in the name of the Defendants on the basis of the mutation is wrong, against law and null and void. It is, therefore, prayed that in place of Defendants, the names of Plaintiff's be recorded in the revenue record in the column of cultivation.

4. The suit is resisted by the Defendants, who, inter alia, contended that the matter in dispute is already pending before the High Court, therefore, proceedings are liable to be stayed. Along with it, an application u/s 10 of the Code was also filed seeking stay of the proceedings.

5. The backdrop of the case, on the basis of which prayer for stay of the proceedings is made, is that Smt. Bhurli, widow of Ghisa Ram, was owner in possession of property in dispute. She had executed an agreement to sell dated 8.3.1980 in favour of Surjan etc. The agreement contained a stipulation that possession of the land has been delivered to the prospective vendees i.e. Surjan etc. The vendor, however, has not executed the sale deed in pursuance of the terms of the agreement. Rather she has sold the suit property in favour of Jangli etc., Plaintiff-Respondents vide registered sale deed dated January 14, 1987. It also contained a stipulation that possession has been delivered to the vendees.

6. Surjan, Kishore alias Kishori and Ors. the prospective vendees under the agreement dated March 8, 1980 filed Civil Suit No. 173 of 1987, titled "Surjan etc. v. Jangli etc." for permanent injunction that they be restrained from interfering in their possession as they were in possession of the suit land by virtue of an agreement to sell, executed by Smt. Bhurli, widow of Ghisa Ram, in their favour.

7. Jangli etc. had resisted the suit and denied the possession as well as ownership of Surjan and others. They had also set up a counter claim with a prayer that Surjan and others be restrained from interfering in their possession and in the alternative they sought a decree for possession of the disputed property.

8. The aforesaid suit No. 173 of 1987, re: "Surjan etc. v. Jangli etc." as well as the counter claim were dismissed by the trial court holding thereby that Surjan etc, were in possession of the suit land as prospective vendees in part performance of the agreement but right conferred u/s 53-A of the Transfer of Property Act was in the nature of passive equity and it was observed by the trial Court that they could only protect their possession without conferring upon them any active title. Counterclaim was dismissed on the ground that Surjan etc. were in possession of the suit property, therefore, they were entitled to protect their possession.

9. Both the parties to the aforesaid suit, aggrieved by the judgment and decree of the trial Court preferred appeals and there too their fate remained the same, as the first Appellate Court had dismissed both the appeals. However, the Appellate Court came to the conclusion that Surjan etc. were not in possession of the suit land and they have no right to challenge the rights of the subsequent purchaser i.e. Jangli etc. Thus, Surjan etc. preferred Regular second Appeal No. 1276 of 1992, which is still pending in this Court and as per order dated June 17, 1992 status-quo regarding possession was ordered to be maintained. This order was made absolute as per order dated July 24, 1992.

10. The parties to the suit, no doubt, are the same. The property in dispute is also subject matter of both the suits. Still, whether the parties being same and that they are claiming their ownership qua the suit land, is enough to attract the provisions of Section 10 of the Code of Civil Procedure?

Section 10 of the Code provides 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 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.

11. A plain reading of Section 10 of the Code would indicate that this Section can be split up into three parts, firstly, the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties, secondly, previously instituted suit is pending and thirdly, the previously instituted suit is pending in any of the Courts, as mentioned therein, such Court is a Court of jurisdiction competent to grant relief claimed in the subsequent suit. It is well settled that the suit within the meaning of this Section includes a tenant's appeal, as in the case in hand RSA No. 1276 of 1992 is pending.

12. The object of the section is also clear and implicit, which is to prevent Courts on concurrent jurisdiction from simultaneously trying two preliminary suits in respect of the same matter in dispute. The suit filed by Surjan etc. had arisen on account of the alleged agreement to sell dated 8.3.1980 executed by Smt. Bhurli in their favour in respect of the land in dispute. Since she had not executed the sale deed in their favour, rather sold the property in favour of Jangli and Ors. therefore, they filed a suit for permanent injunction that Jangli and others be restrained from interfering in their possession. It appears that declaration was also sought whereby they had challenged the sale effected in favour of Jangli and others and for that reason the appeal was dismissed by the first Appellate Court by observing that Surjan etc. were not in possession of the suit land and that they had no right to challenge the right of subsequent purchaser i.e. Jangli etc.

13. Mr. Ajay Jain learned Counsel for the Petitioners has relied on the case of Sehgal Knitwears v. Shreshth International 2001 (I) RCR (Civil) 373. In that case, the observations made under para 8 of the judgment are to the following effect:

It is, thus, clear that the suit at Ludhiana filed by the Plaintiff is later in point of time vis-a-vis suit filed by the Defendant at Delhi. In both the suits the matter in issue is directly and substantially the same and the parties are also the same namely M/s. Sehgal Knitwears and M/s. Shreshth International. Substratum of the relief claimed in the Ludhiana suit will impinge upon the relief claimed in the Delhi suit. Similarly relief claimed in Delhi suit will impinge upon the relief claimed at Ludhiana suit. In this case, the foundation for the cause of action for M/s. Sehgal Knitwears and M/s. Shreshth International is substantially the same so far as the substratum of the case of each party is concerned and, therefore, Ludhiana suit which was filed later in point of time was rightly stayed by the learned trial Court. Finding to be recorded by the Delhi Court in the Delhi suit will operate as res judicata as far as the

substantive/core issues are concerned which will be decisive of the genuineness of the claim of one party or the other party.

14. Here in the case in hand, the present suit filed by Jangli and others though for declaration is mainly to the effect that the entries recorded in the name of Surjan and others in the revenue record in the column of cultivation are wrong, against law and null and void. These could not be recorded on the basis of the mutation No. 2i95 decided on 9.5.1992. In fact, these should have been recorded in the name of the Plaintiffs. It is this part of the relief which the Plaintiffs in the suit cannot get. In the previous suit No. 173 of 1987 filed by Surjan and Ors. the present Plaintiffs had no doubt filed the counter claim claiming their possession etc. The reason for filing the present suit can also be gathered from an order passed by a Division bench of this Court on 20.3.1995 in C.W.P. No. 4162 of 1996 (Jangli and Ors. v. The Financial Commissioner, Haryana, Chandigarh, Surjan and Ors.). The writ petition was disposed of by observing as under:

The Petitioner has challenged the mutation which neither confers title nor takes away any right. If any cloud has been cast by the Petitioners right, title or interest, they are at liberty to file a civil suit in accordance with Section 45 of the Land Revenue Act.

No ground to interfere in exercise of writ jurisdiction is made out.

Dismissed.

Sd/- M.S. Liberhan

Sd/- M.L. Singhal

Judges.

20.3.96

On the contrary, Mr. Prabodh Mittal, learned Counsel, for the Respondents contended that revenue entries were changed on 19.5.1992 whereas Suit No. 173 of 1987 was decreed on 8.4.1992. The order in CWP No. 4162 of 1996 was passed on 20.3.1996. In the counter claim filed by the Plaintiff-Respondents, they had claimed that in case they are dispossessed then the possession may be restored to them.

15. Mr. Mittal, learned Counsel for the Respondents has also relied on the case of Dr. Devi Ram Sharma v. Ved Singh and Anr. 1986 PLJ 315. The observations made under para 4 of the judgment are to the following effect:

The order per se is in any case materially irregular. In the previously instituted suit, the matter in issue is whether the Plaintiff Ved Singh in that case has become owner of 1/4th share of the plot by adverse possession. The matter directly and substantially in issue in the subsequent suit is whether the property is partible and on what shares. It is on the determination of shares that a mode of partition would have to be evolved to put the parties in respective possessions of shares allotted to

them. In other words, in the later suit first a preliminary decree would require to be passed and then followed by a final decree. It is obvious that the previously instituted suit and the suit instituted later have nothing in common except that the property is common and property is not "matter" in issue. I see no reason why the two suits cannot simultaneously be allowed to proceed. In case Ved Singh Petitioner is successful in proving that he has become owner to the extent of 1/4th share of the plot by adverse possession, there and then the suit of Devi Ram Sharma Petitioner would merit dismissal. But in case Ved Singh fails to establish his becoming owner to that extent by adverse possession, the necessary sequel would be that the suit of Devi Ram Sharma, the present Petitioner, would get decreed for partition for his share, to that extent by passing a preliminary decree. Thus, it is my considered view that Section 10 of the CPC was not attracted to the case and even if it was to some extent by stretching of its language, interest of justice required, on the peculiar facts of this case, that both the suits be proceeded together upto the stage of the preliminary decree in the later instituted suit.

Thus, where a party is challenging the mutation, which is a separate matter, whether it can be challenged in a civil suit or not, but the fact remains that the relief which the Petitioners have claimed in the present suit cannot be granted to them in the previous suit, therefore, it cannot be said that the matter in issue is directly and substantially same in both the cases, therefore, the proceedings are liable to be stayed.

For the aforesaid reasons, I find no ground to interfere with the impugned order. Dismissed.