

CR-4281-2024 (O&M) & CR-4347-2024 (O&M)

2025:PHHC:080609



Sr.No.146 (2 cases)

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

**Reserved on : 08.04.2025
Pronounced on : 07.07.2025**

1) CR No.4281 of 2024 (O&M)

Ashish Arora

...Petitioner

Versus

Subhash Chander Arora and others

...Respondents

2) CR No.4347 of 2024 (O&M)

Ashish Arora

...Petitioner

Versus

Amit Arora and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Petitioner in person.

Ms. Nandini Gupta, Advocate
for respondents No.1 to 3.

Mr. Sunit Narang, Advocate and
Mr. Rahul Sharma, Advocate
for respondents No.5 & 6 (CR-4347-2024)

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Mr. Jagraj Singh, Advocate
for Mr. Vinish Singla, Advocate
for respondent No.7-Bank (CR-4347-2024)

Mr. Sherry K. Singla, Advocate
for respondents No.9 & 10 (CR-4347-2024)

Mr. Ramesh Chand Sharma, Advocate
for respondent No.11 (CR-4347-2024).

PANKAJ JAIN, J.

By way of instant judgement, I intend to dispose off above-captioned two revision petitions filed by petitioner-Ashish Arora.

2. Revision Petition bearing CR No.4281 of 2024 is directed against order dated 20.02.2024, passed by Civil Judge (Jr. Division), Jalandhar, whereby the application preferred by petitioner under Section 10 CPC seeking stay of proceedings in Civil Suit No.1766 of 2022, titled as *Subhash Chander and others vs. Ashish Arora*, has been ordered to be dismissed and against order dated 20.02.2024, passed by Civil Judge (Jr. Division), Jalandhar, whereby the application preferred by petitioner under Order VIII Rule 1 CPC seeking striking off the defence of defendant/petitioner herein, has also been ordered to be dismissed.

3. Revision Petition bearing CR NO.4347 of 2024 is directed against order dated 20.02.2024, passed by Civil Judge (Jr. Division), Jalandhar, whereby the application filed by respondents No.1 to 3 for clubbing of Civil Suit No.1766 of 2022, titled as *Subhash Chander and others vs.*

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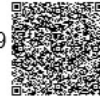
Ashish Arora and Civil Suit No.445 of 2022, titled as *Ashish Arora vs. Amit Arora*, has been ordered to be allowed and both the said civil suits have been directed to be consolidated and tried together.

4. The dispute is between family. Subhash Chander Arora – respondent No.1 in CR No.4281 of 2024 has three sons Ashish Arora, Girish Arora and Amit Arora. His wife namely Smt. Joginder Kaur died on 26.10.2003. Petitioner-Ashish Arora filed suit for declaration claiming himself to be exclusive owner in possession of Plot No.384, Friends Colony, Jalandhar, measuring 7 marlas 91 sq. ft. and further declaration to the effect that he is co-owner in joint possession of residential property, to the extent of 1/3rd share in H.No.385, Friends Colony, Jalandhar, measuring 10 marlas and further declaration to the effect that petitioner has 1/3rd share in Shop Nos.22 & 27, measuring 168 sq. ft. each, as detailed out in the headnote of the plaint and also sought rendition of accounts *qua* the properties left by Smt. Joginder Kaur and held jointly by her husband – Subhash Chander Arora-the father. Further relief sought in shape of perpetual injunction and mandatory injunction. The said suit bearing CS No.445 of 2022 has been preferred by petitioner on 04.06.2022.

5. Subsequent to the filing of said suit by the petitioner, the father Subhash Chander Arora along with his two other sons namely Amit Arora and Girish Arora, i.e. defendants No.1 to 3 in the earlier suit, filed suit bearing CS No.1766 of 2022 for separate possession by way of partition by metes

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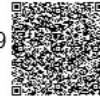
and bounds *qua* two properties which are subject matter of the earlier suit, i.e. residential property bearing H. No.385, Friends Colony, Jalandhar, measuring 10 marlas and Plot No.384 Friends Colony, Jalandhar, measuring 7 marlas 91 sq. ft.

6. In the earlier suit, petitioner claimed declaration that he is co-owner to the extent of 1/3rd share in H.No.385 and has further sought declaration that he is exclusive owner in possession of Plot No.384. The respondents No.1 to 3 in the subsequent suit averred as under:-

“6. That even, as the plaintiff No.1 has purchased the above said properties and made construction over it from his hard earnings but as in the above said sale deeds the wife of the plaintiff No.1 was added as joint owner to the extent of one half share, as such plaintiff No.1, in order to buy peace, wants to get the partition into the above said properties by meets and bounds and plaintiffs wants that share of the defendant i.e. 1/8 be separated from the share of the plaintiffs. At present defendant will have only right to get share into the immoveable property left by Late Smt. Joginder Kaur i.e. to the extent of 1/4th share. The plaintiffs are also one of the class-1 legal heir of Late Smt. Joginder Kaur, as such the share of Late Smt. Joginder Kaur will be divided into four parts and same will be goes to plaintiffs and defendant equally. As such the share of the plaintiff no.1 in both properties is 5/8th Share and plaintiff no. 2 and 3 and defendant have 1/8th share each in both properties. Meaning thereby the share of the plaintiff No.1 in the house/property bearing No.385 and property no.385, Friends Colony, Jalandhar is to the extent of 5/8th share

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and share of the plaintiffs No.2 and 3 and defendant are 1/8th share each. However, all the plaintiffs are ready to joint their share in the suit properties, as such the share of the defendant in the suit property bearing No.385, Friends Colony, Jalandhar is only 1.25 Marla and in the suit property bearing No.384, Friends Colony, Jalandhar is only 0.98 Marla approximately.”

7. Petitioner filed application under Section 10 CPC in the subsequent suit filed by respondents No.1 to 3, whereby he sought stay of proceedings in subsequent suit invoking principle of *res subjudice*. Respondents No.1 to 3 filed application in the earlier suit praying for clubbing and trying both the suits together. While applications filed by petitioner have been ordered to be dismissed, the application filed by respondents No.1 to 3 stands allowed.

8. Assailing the orders, petitioner submits that the Trial Court erred in dismissing the application filed by petitioner under Section 10 CPC and the application consolidating the suits ought not to have been allowed. He submits that whole of the approach of the Trial Court is against the spirit of Section 10 CPC. It has been contended that mandate of Section 10 CPC is clear and unambiguous. The subject matter of the properties being same in both the suits, the subsequent suit filed by respondents No.1 to 3 needs to be stayed and cannot be allowed to proceed till the earlier suit, filed by petitioner, is decided. He thus submits that the order passed by Trial Court consolidating the suits and dismissing the application preferred by petitioner under Section



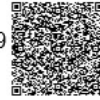
10 CPC for staying the subsequent suit, cannot be sustained and impugned orders need to be set aside.

9. *Per contra*, counsel for respondents No.1 to 3 has supported the impugned orders passed by the Trial Courts. She submits that trial is yet to commence as the issues in the subsequent suit have not been framed and thus at this stage Section 10 CPC cannot be invoked to stay proceedings in the subsequent suit. She further submits that the Court below has rightly consolidated hearing of the two suits. Object is to avoid multiplicity of proceedings and unnecessary delay and both the parties shall suffer from protraction of litigation in case application filed under Section 10 CPC is allowed.

10. I have heard the petitioner in person and counsels for the respondents and have carefully gone through records of the case.

11. In order to appreciate the rival contentions, it will be apt to peruse the following provision:-

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.



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.

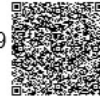
12. The aforesaid provision came up for consideration before the Supreme Court in the case of ***National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara, (2005) 2 SCC 256***, wherein it has been observed as under:-

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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)

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13. 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:-

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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



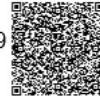
because till 2.8.1999, the premises were found kept open and alive for operation. The Appellate Authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the second round, the appellant did not adduce any evidence worth 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)

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14. After referring to the aforesaid observations made by Supreme Court, this Court in ***Dheeraj Gupta and another vs. Ritu Gupta and others, passed in CR No.2901 of 2024, decided on 03.12.2024***, has culled out the following propositions:-

“(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.”

15. Applying the aforesaid propositions to the present case, this Court finds that the petitioner filed a suit earlier in time seeking decree of



declaration asserting himself to be co-owner in joint possession to the extent of 1/3rd share in H.No.385, Friends Colony, Jalandhar, measuring 10 marlas and claimed 1/3rd share in Shop Nos.22 & 27, measuring 168 sq. ft. each. To the contrary, the respondents No.1 to 3 filed suit for partition wherein co-ownership of petitioner was admitted only to the extent of 0.98 marlas in Plot No.384 and 1.25 marlas in H.No.385.

16. Provision as contained under Order XX Rule 18 CPC needs to be referred which deals with decree in suit for partition of property. The same reads as under:-

18. Decree in suit for partition of property or separate possession of a share therein.—Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the



property and giving such further directions as may be required.

17. Thus, in every suit for partition, decree of declaration is inherent. While petitioner has limited his prayer to the suit for declaration and injunction, respondents No.1 to 3 in their suit have sought severance of their respective shares. The decree in earlier suit filed at the behest of the petitioner will be in nature of preliminary decree to be passed in subsequent suit filed by respondents No.1 to 3. While petitioner in his suit claims joint possession, respondents No.1 to 3 in subsequent suit have sought severance of the possession.

18. Thus, result in the suit filed by petitioner and staying the suit filed by respondents No.1 to 3 would not be sufficient to put quietus to the dispute between the parties. It is in these circumstances that this Court finds that Section 10 CPC need not be invoked to stay the subsequent suit filed by respondents No.1 to 3 as the prayer made by petitioner in the earlier suit is inherently involved in the suit filed by respondents No.1 to 3.

19. Thus, it will be in the interest of justice as well as in the interest of both the parties that instead of staying the suit filed by respondents No.1 to 3, both the suits be tried together which is precisely what the Trial Court has ordered.

20. Finding no merits in the present revision petitions, the same are ordered to be *dismissed*.

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21. Pending application(s), if any, shall also stand disposed off.
22. Photocopy of this order be placed on file of the connected case.

**(PANKAJ JAIN)
JUDGE**

July 07, 2025

ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No