



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 164 of 2025 (O&M)

Date of Decision: 14.01.2025

Maheshinder Singh Sidhu

... Petitioner(s)

Versus

Smt. Harbhajan Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.D.Randhawa, Ms. Tarranum Madan and
Ms. Ishita Pal, Advocates, for the petitioner(s).

Anil Kshetarpal, J.

1. The defendant No.3 assails the correctness of the Trial Court's order passed on 16.11.2024 while dismissing his application under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). Two suits filed by the respondents are pending. Civil Suit No. 1449 of 2019 was filed with the following prayers:-

"A Decree be passed in favour of the plaintiffs an against the defendants declaring the plaintiffs collectivel to be co-owners of house no.1067 sector 8-C, Chandigarh to the extent of 2/3rd share along with the defendants who collectively own the balance 1/ 3rd share. And

A Decree be passed in favour of the plaintiffs and against the defendants by way of Permanent/Perpetual Injunction restraining the defendants from alienating their respective or collective share in house no.1067 sector 8-C, Chandigarh to

any third party, except to the plaintiffs, by way of sale, gift, mortgage or in any other manner, till the suit property is finally partitioned by metes and bounds. AND

A Decree of partition be passed in favour of the plaintiffs and against the defendants for partitioning the no.1067 Sector 8-c, Chandigarh, by metes and bounds and carving out a separate independent unit for the plaintiffs as per their 66.66% share in house no.1067 sector 8-C, Chandigarh.

In the alternative, if the site house number house no.1067 Sector 8-C, Chandigarh cannot be partitioned by metes and bounds under the Building Rules then the site be put to auction interse between the parties allowing the plaintiffs to purchase the shares of the other co-owners as provided in the Partition Act 1893 or the same be put to open public auction and the sale proceeds be distributed amongst the co-owners proportionate to their respective shares in the suit property.

Any other relief whatsoever as the plaintiff may be found entitled to in the peculiar nature and circumstances of the suit, may also be granted in favour of the plaintiffs and against the defendants in the interest of justice and fair play.”

2. The aforesaid suit is pending. Subsequently, Harbhajan Kaur and Jashpinder Singh filed a suit for rendition of the accounts on the ground that the petitioner and respondents No. 3 and 4 have let out the property to the paying guests and they are earning income by using the joint property. As noticed above, the petitioner filed an application under Section 10 CPC

which was dismissed on the ground that the subject matter of both the suits is different.

3. The learned counsel representing the petitioner contends that the plaintiffs are yet to establish their rights qua 1/3rd share of the suit property. Hence, the second suit was not maintainable.

4. This Court has considered the submission of the learned counsel representing the petitioner.

5. Section 10 CPC enables the Court to stay the proceedings of the second suit if the matter in issue in the subsequent suit is also directly and substantially in issue in a previously instituted suit between the same parties. In the first suit, the main issue is with regard to the entitlement of the plaintiffs, whereas in the second suit, the main issue is with regard to the entitlement of the plaintiffs to the income from the property. Hence, the substantive issues in both the suits are different.

6. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 14, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No