



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

**116**

**CR No.596 of 2025 (O&M)  
Date of Decision :02.07.2025**

**Mamta Yadav**

**.....Petitioner**

**Versus**

**Balraj and another**

**..... Respondents**

**CORAM: HON'BLE MR.JUSTICE VIKRAM AGGARWAL**

Present : Mr. Mohit, Advocate and  
Mr. Pavitra, Advocate for the petitioner.

Mr. Sandeep Kotla, Advocate for respondent No.1.

None for respondent No.2 despite service.

**VIKRAM AGGARWAL, J. (Oral):**

The present revision petition is directed against the order dated 12.11.2024 (Annexure P-4), passed by the Court of Additional Civil Judge (Sr. Divn.), Fatehabad, vide which the application moved by the petitioner under Section 10 of the Code of Civil Procedure, 1908 (for short 'CPC'), for stay of civil suit instituted by respondent No.1 was dismissed.

2. A Civil Suit No.76 of 2021 was instituted by the petitioner (Mamta Yadav) against respondent No.1-Balraj and one Jagdish for mandatory injunction, declaration and permanent injunction etc.

3. The case set up was that the plaintiff and her family had sought the help of defendants in obtaining a buffalo loan of Rs.3,50,000/- in lieu of which the defendants got certain few blank papers signed from the plaintiff. Two blank cheques were also signed and were handed over to the defendants. It was claimed that the said blank papers and cheques appeared to have been



misused by the defendants and the plaintiff apprehended that some agreement to sell may be set up by them.

4. Few months after the filing of the suit, Balraj-respondent No.1 instituted a Civil Suit No. 495 of 2021 against the present petitioner and one Ajmer for possession by way of specific performance of the land measuring 3 marla 5 sarsai, situated in village Basti Bhiwan, Tehsil and District Fatehabad on the basis of the agreement to sell dated 05.05.2020, executed by Mamta Yadav in favour of Balraj, for a total sale consideration of Rs.14,00,000/- out of which Rs. 13,00,000/- had been obtained as earnest money. It was also stated that the suit land had been mortgaged by Mamta Yadav in favour of defendant No.2 therein i.e. Ajmer.

5. An application under Section 10 CPC (Annexure P-3) was moved by the petitioner for staying the suit filed by respondent No.1. The said application was opposed. By way of the impugned order dated 12.11.2024, the said application was dismissed leading to the filing of the present revision petition.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has strenuously urged that the impugned order is not sustainable. He submits that the suit (Annexure P-1) was initially filed by the petitioner, as a counter blast to which, the suit (Annexure P-2) was filed by respondent No.1. Learned counsel has referred to both plaints. He has submitted that respondent No.1 had put in appearance in the first suit on 17.03.2021 and he instituted the second suit on 09.07.2021. He submits that since the issue involved in the first suit is the same i.e. the validity of the agreement to sell in question, the trial Court should have stayed the trial



of the second suit. In support of his contention, learned counsel has placed reliance upon **Raj Rani Vs. Madan Lal and others 2021(1) RCR (Civil) 689, National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara 2005(2) SCC 256 and Dheeraj Gupta and another Vs. Ritu Gupta and others 2024 NCPHHC 161623.**

8. *Per contra*, Mr. Sandeep Kotla, learned counsel representing respondent No.1 submits that there is no illegality in the impugned order. He submits that the findings recorded in the first suit would not operate as *res judicata*, for, the nature of both suits, is different and even the parties are different. Learned counsel submits that the under the circumstances, the trial Court rightly dismissed the application.

9. I have considered the submissions made by learned counsel for the parties.

10. Section 10 CPC lays down as under:-

**“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.”**

11. In the case of **Rajinder Aggarwal and another Vs. M/s**



**K.R.Finmark Pvt. Ltd.**, a Co-ordinate Bench examined the scope of Section 10 CPC and held that there were three conditions which must exist for prohibiting the Court from proceeding with the trial of suit. It was also held that the predominant condition is that the matter in issue should be directly and substantially in issue as in previously instituted suit between the same parties and the decree in one of the suit is bound to frustrate the decree in the other suit. It was held that the acid test is when the decision of earlier suit will operate as *res judicata* in the subsequently instituted suit. In arriving at this conclusion, the Co-ordinate bench placed reliance upon the judgment of the Supreme Court in the case of **Aspi Jal Vs. Khushroo Rustom Dadyburjor** 2013(2) RCR (Civil) 976 (SC);

“[11]. In **Surinder Singh Vs. Major Teja Singh Mansahia, (P&H) 1994(1) R.R.R. 446**, it was held that primary object of the provision is to prevent the Courts of concurrent jurisdiction from simultaneously adjudicating upon the same dispute. This was so in the facts and circumstances of the case that the process is expensive and time consuming. The legislature has introduced this provision so as to ensure that time of Courts is not unnecessarily wasted. 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. In the absence of these two conditions, the provision in terms of Section 10 CPC cannot be invoked.

[12]. In **Smt. Naurati and others Vs.Mehma Singh (P&H) 1972 PLR 558**, it was held that two parallel proceedings in respect of same cause of action should be avoided and policy of law is to confine the plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by the Courts in respect of same relief.

[13]. Three conditions must exist for prohibiting the Court from proceeding with the trial of the suit under the aforesaid provision:-

(i) Where there is a previously instituted suit between the parties.



(ii) Where the matter in issue is directly and substantially the same in both the suits.

(iii) Where a suit is pending between the same parties or between the parties under whom they or any of them claim litigating under the same title.

[14]. The predominant condition is that the matter in issue should be directly and substantially in issue as in the previously instituted suit between the same parties and the decree in one of the suit is bound to frustrate the decree in other suit. The acid test is when the decision of the earlier suit will operate as *res judicata* in the subsequently instituted suit. The object is to prevent the Courts of concurrent jurisdiction from simultaneously adjudicating upon two parallel litigations in respect of same cause of action and the same subject matter involving same relief. The ratio laid down in *Aspi Jal Vs. Khushroo Rustom Dadyburjor* 2013(2) RCR (Civil) 976 (SC) can be relied.”

12. Still further, in *National Institute of Mental Health & Neuro Sciences Vs. C. Paramshwara*, 2005 (2) SCC 256, it was observed as under:-

“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.”

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:-

“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.”**

14. Relying upon the aforesaid observations, Supreme Court in the case of **Aspi Jal (supra)**, observed as under:-

**“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.”**

15. Reverting to the facts of the present case, the suit (Annexure P-1) was filed by the petitioner Mamta Yadav with the following prayer:-

**Suit for issuance of mandatory injunction in favor of plaintiff and against defendants for returning the blank but signed cheques of plaintiff which defendants illegally & fraudulently took from plaintiff on pretext of securing buffalo loan**

**and**

**for issuance of mandatory injunction in favor of plaintiff and against defendants for returning the blank papers having signature of plaintiff which defendants illegally & fraudulently took from plaintiff on pretext of securing buffalo loan**

**and**

**for declaration to the effect that agreement (affidavit) executed between plaintiff and defendant no.1/defendants on the blank but signed papers of plaintiff in regard to house of plaintiff is wrong illegal, against the Law, arbitrary, without consent / knowledge of plaintiff, result of fraud played by defendants upon plaintiff and same is liable to be declared as null & void, with consequential relief in nature of issuance of mandatory injunction in regard to**



compensation qua illegal harassment, mental agony, distress suffered by plaintiff due to wrong, illegal and mischievous conduct of defendants

and

for rendition of accounts between plaintiff & defendants and for recovery of the amount which ever may be found due to be recovered in favor of plaintiff against the defendants

and

for issuance of permanent injunction against defendants from interfering into the personal life & liberty of plaintiff and for restraining defendants from extending illegal threats of causing damage to plaintiff & plaintiff's family

and

for issuance of money decree regarding apposite compensation (compensation which Hon'ble Court quantify) to plaintiff regarding deliberate harassment, mental agony, distress caused by conduct of defendants

or

for issuance of any decree or order in favor of plaintiff which the Hon'ble Court may deem fit and proper to meet the ends of justice in the peculiar facts and circumstances of this present case.

16. Notably, apart from respondent No.1-Balraj, there was another defendant namely Jagdish.

17. The suit (Annexure P-2) was filed by respondent No.1-Balraj against the present petitioner and one Ajmer with the following prayer:-

“Suit for possession by way of specific performance of contract of sale regarding land measuring 3 Marla 5 Sarsai i.e. 1/45 share of land measuring 8 Kanal 0 Marla, comprised in Khewat No.969 Khatoni No. 1001 bearing Khasra No.169//6(8-0) as per jamabandi of the year 2013-14 (New Khewat No.949, as per copy of jamabandi for the year 2018-19), situated in village Basti Bhiwan (Yog Nagar), Tehsil & District Fatehabad, on the basis of agreement to sell dated 05.05.2020 executed by the defendant No.1 in favour of the plaintiff for a total sale consideration of Rs.14,00,000/- (Rupees Fourteen Lacs) and defendant No.1 received Rs.13,00,000/- as earnest money from the plaintiff and fixed the date for execution and



registration of sale deed as 04.05.2021 and the mortgage deed bearing serial No.581, Dated 27.05.2020 from the office of Sub Registrar Fatehabad executed by defendant No.1 in favour of defendant No.2 with regard to the above said land amounting to Rs.10,00,000/- (Rupees Ten Lacs) on interest at the rate of 1.50% per month for one year and entry on the basis of above said mortgage deed bearing repat No.400, Dated 09.02.2021 in the revenue record is collusive, fraudulent, false, fictitious and bogus and without any consideration and is wrong, illegal, against law and facts, without notice, knowledge and consent of the plaintiff and is not binding upon the rights of the plaintiff and has been obtained only to defeat the rights of the plaintiff under the aforementioned agreement of sale and is liable to be set aside and this mortgage deed has been obtained by the defendants with full knowledge of aforementioned agreement of sale and as a consequential relief suit for permanent injunction thereby restraining the defendants from alienating or transferring the suit land to any person and creating any encumbrance over the said land, in any manner. On the basis of oral as well as documentary evidence.”

18. First of all, the first suit is a suit for mandatory injunction and declaration whereas the second suit is a suit for possession by way of specific performance of an agreement to sell. Further, parties to both suits are different. The matter in issue in the second suit is, therefore, not directly or substantially in issue in the first suit. The petitioner, in the first suit stated that an agreement to sell had been created by the defendants therein from blank signed papers. At best, the issue as regards the agreement to sell would be common. This would not mean that the trial of the second suit was liable to be stayed. As noted earlier, relief claimed as also parties in both suits are different. If such a course was to be adopted, anybody would file a suit to foreclose the right of a person to institute a suit for possession by way of specific performance of an agreement to sell.

19. If one considers the provisions of Section 10 CPC and the law on



the subject which has been discussed in the preceding paragraphs, it emerges that no illegality was committed by the trial Court in dismissing the application moved by the petitioner under Section 10 CPC.

20. I have gone through the judgments relied upon by learned counsel for the petitioner. All three judgments were given in the particular facts of the particular cases, though the principles would remain the same. In view of the same, the judgments would not come to the aid of the petitioner.

21. In view of the same, I do not find any merit in the instant revision petition and the same is accordingly, dismissed.

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

**(VIKRAM AGGARWAL)**  
**JUDGE**

**02.07.2025**

*Manoj Bhutani*

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