

Bhupinder Kumar Vs. Hari Singh and ors.

Bhupinder Kumar Vs. Hari Singh and ors.

SooperKanoon Citation : sooperkanoon.com/919194

Court : Himachal Pradesh

Decided On : May-19-2011

Judge : Deepak Gupta, J.

Acts : Code of Civil Procedure (CPC) (C.P.C) - Section 10; [Constitution of India](#) - Article 227

Appeal No. : CMPMO No. 75 of 2011

Appellant : Bhupinder Kumar

Respondent : Hari Singh and ors.

Advocate for Def. : Mr. Dinesh Sharma, Adv.

Advocate for Pet/Ap. : Mr. O.C.Sharma; Mr. Ravinder Thakur, Adv.

Judgement :

1. This petition is directed against the order dated 9.2.2011 passed by the learned Civil Judge (Jr. Division), Kasauli whereby she rejected the application filed by the petitioner under Section 10 CPC for stay of the suit.

2. Briefly stated the facts relevant for disposal of the case are that the petitioner filed Civil Suit No. 3-1/11 which was taken up by the learned Civil Judge (Senior Division), Kasauli. Plaintiff Bhupinder Kumar filed the suit against Narata Ram, Hari Singh and Mani Singh. Basic prayer in this suit was that the defendants be

restrained from causing any interference, hindrance or obstacle in the enjoyment of the exclusive possession of the plaintiff over specific portion of land comprised in Khasra Nos. 268/5/1, 268/3 and 268/4 in Mauza Khadeen, Pargana Nali Dharti, Tehsil Kasuali, District Solan (H.P) and further they be restrained from interfering in the construction work being raised by the plaintiff Bhupinder Kumar. In the plaint it was admitted that the land was joint but according to the plaintiff this exclusive portion had been purchased by him and was, therefore, in his exclusive possession and he was entitled to raise construction over it. It would be pertinent to mention that the suit was filed on 27th January, 2011. It was taken up by the Court on 29th January, 2011 and on the said date the respondents were represented and thereafter Civil Judge (Sr. Division) passed an order directing both the parties to maintain status quo qua possession with regard to the suit land.

3. Thereafter Hari Singh and Mani Singh, who were defendants No. 2 and 3 in the suit filed by the present petitioner filed a Civil Suit No. 7-1 of 11 in which they claimed that they are co-sharers in possession of land comprised in Khata No. 22, Khatauni No. 32, Khasra No. 267 measuring 15- 18 bighas and Khasra No. 268 measuring 59-9 bighas. This property includes the land which was the subject matter of the suit instituted by Bhupinder Kumar. The petitioner filed an application under Section 10 CPC in the second suit praying that the second suit be stayed. The learned trial Court rejected this application on the ground that the matter substantially and directly in issue in both the suits is not the same since the cause of action was different and that both the suits are suits for injunction and for every cause of action separate suit for injunction cannot be filed and therefore, held that Section 10 CPC is not applicable.

4. At this stage, I am not going into the correctness of the decision of the learned trial Court but in exercise of supervisory powers under Article 227 of the [Constitution of India](#), I am clearly of the view that crux of the dispute is common to both the cases. Crux of the dispute is whether the present petitioner is in exclusive possession of the property and has a right to develop the same. This dispute is common to both the suits. However, at the same time it is to be noted that both the suits are based on different causes of action. In the suit filed by the present petitioner he alleges that the respondents are interfering in his possession and in

the suit filed by the respondents they alleged that the petitioner has no right to raise construction. I am of the view that instead of filing a separate suit the defendants could have claimed the same right in the counter claim also.

5. Be that as it may, I am of the considered opinion that both the suits should be heard and tried together and should not have been assigned to different courts. The interest of the parties is not served by staying the second suit but by ensuring that both the suits are tried together. Therefore, the second suit being Civil Suit No. 7- 1 of 2011 titled as Hari Singh vs. Bhupinder Kumar is directed to be transferred to the docket of the learned Civil Judge (Senior Division), Kasauli, who shall hear and try both the suits together. It is also made clear that it is for the trial Court to decide whether the evidence should be recorded separately in both the cases or both the cases should be consolidated for the purpose of recording of evidence. This Court is not saying anything on this issue but the trial Court shall ensure that the suits are fixed on the same date and are heard and tried together so that there are no conflicting judgements at a later stage.

6. The petition is disposed of in the aforesaid terms. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com