

(2010) 09 P&H CK 0255
In the Punjab And Haryana At Chandigarh

Gurdit Singh and Others

APPELLANT

Vs

Amrit Pal and Others
 Ravinderpal Singh Vs Amrit Pal
and Another

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : (2011) 161 PLR 528

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Since in the present petitions, the facts and questions involved are identical, hence, all the petitions are being taken up and decided by this common judgment with the consent of the learned Counsel for the parties.

2. By the impugned order, the application moved by the defendants u/s 10 read with Section 151 C.P.C. seeking stay of the suit or in alternative seeking direction to decide issue No. 5 as preliminary issue, was dismissed.

3. The brief facts of the present case are that plaintiff -respondent has filed suits for cancellation of the various sale deeds on the ground that on the date of execution of the power of attorney, plaintiff was minor as his date of birth is 11.10.1965. He became major on 11.10.1983, while alleged general power of attorney in favour of Jarnail Singh was executed on 04.02.1982, hence, general power of attorney was void and any sale deed executed by Jarnail Singh, power of attorney is also void.

4. Learned Counsel for the petitioners vehemently argued that since in the previously instituted suit and in the present suit, the question and grounds to challenge the impugned sale deeds are identical, hence any decision on the issue in the previously instituted suit which is pending disposal in second appeal would be res judicate in the present suit, hence, present suit must be stayed.

5. Learned Counsel for the respondent while placing reliance on the judgment of the Apex Court in the matter of National Institute of Mental Health and Neuro Sciences v. C. Parameshwara reported in AIR 2004 SCW 6900 has argued that subject matter of both the suits are different, since in the previously instituted suit sale deed and land involved is different, while in the present case, sale deed was executed through general power of attorney and land is different, hence there is no question of stay.

6. Hon'ble Apex Court in the matter of National Institute of Mental Health & Neuro Sciences (supra), in paragraph No. 8 has held 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 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 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 and 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.

7. From the dictum of the Apex Court, I have no hesitation to observe that if decision in the previously instituted suit shall be *res judicata* in the subsequently instituted suit, then Section 10 C.P.C. applies in full force. Undisputedly, in the previously instituted suit and in the present suits, plaintiff is the same. Undisputedly, in the previously instituted suit and in the present instituted two suits defendants are same except in Civil Suit RT No. 39 of 2000 where son of the defendant is the defendant. The question involved in all the suits is as to whether plaintiff was minor on the date of execution of the impugned sale deeds and power of attorney pursuant to which some of the sale deeds were executed. Grounds to challenge the sale deeds are same, common and identical. In the opinion of this Court, decision in the second appeal arising out of the previously instituted suit would be *res judicata* in the subsequent suit. In the opinion of this Court, proceedings of the present suits ought to have been stayed. Merely because in all the suits, sale deeds are different will not make the subject matter different. Petitions are allowed. The orders impugned are set aside. Suits are

directed to be stayed.

8. A photo copy of the order be placed on the files of the connected matters.