

therein to set aside the aforesaid order and allow the application under S.10 CPC, filed by the him.

2. Having heard learned counsel for the parties and perused the material available on record, vis-à-vis reasoning assigned in the order impugned in the instant proceedings, this court finds no illegality in the same and as such, no interference is called for.

3. Briefly the facts of the case as emerge from the record are that the plaintiff filed Civil Suit No. 1595 of 2007 in the High Court of Delhi, seeking partition of properties including properties situate in Dalhousie, District Chamba against defendant No.1. In the aforesaid suit, plaintiff prayed for decree of declaration in her favour to the effect that she is joint share holder of all the estate left behind by late Col. Pindi Dass Chopra (P.D. Chopra) to the extent of 1/8th share. In the aforesaid suit, plaintiff while praying for appointment of local commissioner also prayed for preliminary decree of partition qua the suit property and for decree of rendition of accounts in her favour and against the defendants with the direction to the defendants to render full accounts of profits so derived from the properties by them.

4. Pursuant to notice issued in the aforesaid suit, defendant No.1 alongwith other defendants filed written statement. However, before the aforesaid suit could be heard and decided on its own merit, plaintiff filed another civil suit (Annexure P-4), in the court of learned Civil Judge (Junior Division), Dalhousie, District Chamba,

for declaration that plaintiff and defendants except defendant No.4 and proforma defendants, are legal heirs of late Pindi Dass Chopra and are lessees in possession of land measuring 0-50-45 hectare comprising of Khasra Nos. 1291, 132, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, Kita 2 Khata Khatauni No. 167/281 and owner-in-possession of land comprised in Khasra No. 1957, Khata Khatauni No. 157/38/51 measuring 00-82-21 hectare both situate at Up Mouja Bakrota Tehsil Dalhousie, District Chamba and late Pindi Dass never executed any Will and Will No. 165, dated 25.7.1995 registered in the office of Sub Registrar, Chamba is false and fabricated document and mutation No. 157, dated 6.4.1996, review of mutation No. 201 dated 11.11.1997 and mutation No. 202 attested on the same date are wrong illegal, and not binding upon the rights of the plaintiff.

5. Pursuant to notice issued in the aforesaid suit having been filed by the plaintiff, defendant No.1 alongwith other defendants, filed written statement, but simultaneously also filed an application under S. 10 CPC, praying therein to stay the suit filed in the court of learned Civil Judge (Junior Division), Dalhousie, Chamba, on the ground that the plaintiff has already filed a suit in Delhi High Court, and issues raised therein are also directly and substantially in issue in the suit filed at Dalhousie. However, vide order impugned in the instant proceedings, learned court at Dalhousie, dismissed the application and refused to stay the suit at Dalhousie. In the aforesaid background, defendant No.1 has approached this

Court, in the instant proceedings, praying therein to set aside the aforesaid order and stay the latter suit filed by plaintiff at Dalhousie, District Chamba.

6. Though, having carefully perused the complaints filed in both the suits by the plaintiff, one in High Court of Delhi and another at Dalhousie, this court finds that suit property detailed in latter suit filed at Dalhousie is same as given in former suit by her in Delhi High court but in latter suit, reliefs as have been sought by plaintiff in former suit at Delhi have not been pressed rather, fresh prayer for declaring Will dated 25.7.1985 allegedly executed by Pindi Dass null and void has been also made. Apart from above, plaintiff in latter suit has also prayed to declare subsequent lease prepared on the basis of Will dated 25.7.1995 to be null and void which prayer was never made in the former suit. Moreover, this court finds that in former suit, plaintiff besides properties situate in Dalhousie also prayed for declaration that she be declared owner alongwith defendants qua properties which had been mentioned in the suit filed within the jurisdiction of court at Dalhousie.

7. Mr. Vinay Kuthiala, learned senior counsel duly assisted by Mr. D.S. Verma, Advocate, appearing for the defendant No.1, while making this Court peruse the complaint filed by the plaintiff in former suit attempted to carve out a case that though no specific prayer has been made in the former suit to declare Will dated 25.7.1995 executed by Pindi Dass to be null and void but if entire complaint is read, it clearly reveals that entire case of the plaintiff in former suit is based upon Will dated 25.7.1995, allegedly executed by late Pindi Dass. He further submitted that since

property situate in Dalhousie as detailed in latter suit filed at Dalhousie has been made part of suit property in former suit, application having been filed by the defendant No.1 under S.10 CPC, praying therein to stay the former suit, ought to have been allowed.

8. However, this court, after having perused the both the plaints filed by the plaintiffs in different courts, finds no force in the afore submission of learned senior counsel for defendant No.1. In former suit, plaintiff while seeking decree of declaration has simply prayed for declaring her to be joint share holder in all the estate left behind by late Col. Pindi Dass Chopra (P.D. Chopra) to the extent of 1/8th share. In the former suit plaintiff claimed properties on the basis of Will alleged to have been executed by late Pindi Dass Chopra, however, in the latter suit, she has specifically prayed to declare Will date 20.11.1974 allegedly executed by late Pindi Dass Chopta to be null and void. Besides above, she has also prayed for cancellation of lease executed on the basis of Will allegedly executed by late Pindi Dass Chopra.

9. If plaints filed in different courts are read juxtaposing each other it cannot be concluded that similar and identical issues are involved in both the cases.

10. Careful perusal of provisions contained under S.10 CPC, clearly reveals that the object underlying Section 10 cpc 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 contradistinction 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.

11. In this regard, reliance is placed upon **National Institute of Mental Health & Neuro Science v. C. Parameshwara** (2005) 2 SCC 256, wherein it has been 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 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.

9. In the present case, the appellant had initiated the disciplinary proceedings against the respondent herein on charges of misappropriation of drugs. In the said disciplinary proceedings, the respondent was found guilty of alleged misappropriation of drugs. On the basis of the findings arrived at in the disciplinary enquiry, the respondent herein was removed. The extent of the loss suffered by the appellant, as found in the disciplinary enquiry, was Rs. 1,79,668.46. Being aggrieved by the order of dismissal, the respondent moved the Labour Court. On 29.10.2001, the Labour Court passed an award setting aside the order of removal dated 12.4.1993. Being aggrieved, the appellant instituted writ petition No. 24348/02. The appellant has also instituted civil suit No. 1732/95 for recovery of the loss suffered by it to the tune of Rs. 1,79,668.46 with interest. Thus, as can be seen from the above

facts, both the proceedings operated in different spheres. The subject matter of the two proceedings is entirely distinct and different. The cause of action of the two proceedings is distinct and different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said writ petition No. 24348/02, the management has challenged the award of the Labour Court granting reinstatement of the respondent

10. As stated above, Section 10 CPC is referable to a suit instituted in a civil Court, The proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court. They are not the Courts of concurrent jurisdiction. In the circumstances, Section 10 CPC has no application to the facts of this case.”

12. Reliance is also placed upon judgment passed by Hon'ble Apex Court in **Aspi Jal v. Khushroo Rustom Dady Burjor**, Civil Appeal No. 2908 of 2013 decided on 5.4.2013, which has been otherwise taken note by learned court below, while passing the order impugned in the instant proceedings. In the aforesaid judgment, Hon'ble Apex Court has categorically held that for operation of S.10 CPC, entire subject matter of the two suits should be the same. Provisions of S.10 CPC will not apply if a few matters in issue are common rather, same would apply if entire subject matter in controversy is same.

13. Record reveals that High Court of Delhi has not framed any issue with regard to legality of Will dated 25.7.1995 alleged to have been executed by late Pindi Dass Chopra. Since the matter qua Will of Pindi Dass Chopra and subsequent

lease deed is not directly and substantially in issue before High Court of Delhi, latter suit filed by the plaintiff in the court of learned Senior Civil Judge, Dalhousie cannot be said to be barred by S.10 CPC.

14. In view of the detailed discussion made supra as well as law taken note above, this court finds no merit in the present petition and same is dismissed. Impugned order passed by learned court below is upheld.

15. Learned counsel for the parties undertake to cause presence of their parties, in person or through counsel, before learned court below on 13.7.2023, enabling it to proceed further with the matter. Interim order, if any, stand vacated. Record of learned court below, if received, be sent back forthwith.

June 27, 2023
(Vikrant)

(Sandeep Sharma),
Judge

High Court