

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2935 of 2015 (O&M)
Date of decision: 30.4.2015

Ramesh Kumar and another

.. Petitioners

v.

Manjeet Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amit Jain, Advocate for the petitioners.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 8.1.2015, passed by the learned court below, vide which the application filed by the petitioners under Order 7 Rule 11 CPC for rejection of the plaint, was dismissed.

In the case in hand, an agreement to sell was executed by the petitioners in favour of respondents No. 1 to 4-plaintiffs on 23.9.2013 for 7 kanals and 14 marlas of land @ ₹ 8,00,00,000/- per acre. Earnest money of ₹ 77,00,000/- was paid. The balance was to be paid at the time of registration of the sale deed. The last date fixed for registration of the sale deed was on or before 21.7.2014. Prior thereto, the petitioners were to get the the land partitioned as it was a joint khewat, their brothers being the co-sharers. As is alleged by the respondents in the suit filed that they were present in the office of Sub Registrar, Gurgaon on 21.7.2014 for getting the sale deed registered, however, the vendors were not present. They did not even get the land partitioned. The prayer made in the suit was for directing the petitioners to get the land partitioned, restraining them from creating any third party rights and further the last date fixed for execution of the sale

deed be deemed to be extended till such time the partition is finalised. In the aforesaid suit filed, the petitioners filed application under Order 7 Rule 11 CPC for rejection of the plaint. The same was dismissed by the learned court below. The order has been impugned in the present petition.

Learned counsel for the petitioners submitted that suit for declaration and injunction, as was filed by the plaintiffs, after expiry of the last date fixed for registration of the sale deed was not maintainable as only a suit for specific performance of agreement to sell could be filed. Prayer for partition could be made therein only. Merely a suit for injunction was not maintainable. However, he did not dispute the fact that in the agreement to sell, a condition was there that the petitioners were to get the land partitioned but he sought to argue that possession of specific portion was delivered to the vendees, hence, they were not prejudiced.

After hearing learned counsel for the petitioners, I do not find any merit in the submissions made. The suit filed by respondents No. 1 to 4 for declaration and injunction cannot be said to be barred under any law on account of which the plaint could be rejected at its threshold. No doubt, the last date for execution of the sale deed had expired but it was not disputed that in the agreement to sell, a clause was there that before getting the sale deed registered, the vendors will get the land partitioned. The same was not done. The prayer in the suit is for a direction to the vendors to get the land partitioned and not to create third party rights. In this factual matrix, the suit cannot be said to be barred under any law. There is no error in the order passed by the court below in rejecting the application filed under Order 7 Rule 11 CPC.

For the reasons mentioned above, the petition is dismissed.

(Rajesh Bindal)
Judge

30.4.2015
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