

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.3805 of 2012.
Decided on:-May 28th, 2015.

Bijay Shankar Halwasiya and othersPetitioners.

Versus

Bhiwani Sudhar and Vikas Samiti, Bhiwani and othersRespondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the petitioners.

Mr. D.R. Singla, DAG and Mr. Ramesh Kumar, AAG, Haryana.

Mr. Mukesh Kumar Verma, Advocate
for respondents No.1, 3 and 4.

Mr. Karanyog Singh Riar, Advocate
for Dena Bank.

Mr. Sachin Gupta, Advocate
for respondent No.11.

Mr. Pardeep Singh Poonia, Advocate
for respondent No.16.

Dr. Bharat Bhushan Parsoon, J.

This revision petition invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India has been filed by the petitioners seeking quashing of order dated 2.4.2011 vide which suit for

declaration as also for injunction filed by respondents No.1 to 5 was allowed to be instituted invoking provisions of Sections 9 and 91 CPC. Order dated 21.2.2012 has also been impugned in this revision petition whereby application of the petitioners-applicants before the lower court for seeking revocation of order dated 2.4.2011 was rejected.

2. Respondents No.1 to 5 had instituted a suit under Section 9 and 91 CPC on 2.4.2011 seeking a decree of declaration and of injunction with averments that a multistory building by illegally joining three plots was under construction by defendants No.1 to 4, petitioners herein, in the name of Halwasiya Mall, Hansi Road, Bhiwani allegedly on the public park land in violation of the provisions of the Haryana Urban Development of Regulation of Urban Areas Act, 1975 as also under the provisions of Haryana Municipal Act, 1973 and its building bye-laws/ notifications issued from time to time. It is claimed that even other notifications covering the field and policy of raising of construction of shopping malls as also fire safety and protection norms etc. had not been complied with and the upcoming construction in the nature of a commercial mall is illegal and unsafe. It was claimed that lease deed executed by defendant Bijay Shankar Halwasiya, now petitioner, in favour of defendants No.2 and 3 (his son and wife) was to be scanned. It was also claimed that any sale deed executed by defendants No.1 to 3, now petitioners, by their attorney in the name of any other person and consequently registered by defendant No.18 is in violation of the provisions of Haryana Development and Regulations of Urban Areas Act, 1975, Haryana Municipal Act, 1973, the Haryana Apartment Ownership Act, 1983 and the Registration Act, 1908. Some other grounds were also taken claiming that the defendants in collusion with each other while playing fraud, were raising construction to the prejudice of general public while defeating the interest of public welfare as also of safety of the masses.

3. Considering the facts put forth in the application under Section

91 CPC and the attending circumstances, the application was allowed on 2.4.2011 when notice of the suit as well as of the injunction application was then issued to the defendants including notice to defendant No.19 i.e. General public was issued through publication in Dainik Bhaskar for 20.5.2011.

4. Defendant Nos.1 to 4, petitioners herein, on coming to know of this order, while making appearance in the suit, made an application seeking revocation of order dated 2.4.2011 (Annexure P-4). It was claimed that there were certain facts which had not engaged the attention of the court and had those facts been considered, impugned order on application under Section 91 CPC filed by respondents-plaintiffs, could not have been passed by the court. It is averred that even earlier a civil suit had been filed by respondent No.1 against the State of Haryana and others in respect of the same subject matter and that the suit was dismissed as withdrawn on 17.11.2011. It is claimed further that even in a pending litigation, an application was moved by the contesting respondents under Order I Rule 10 CPC which application was also dismissed on 16.12.2010 against which civil revision in this Court was also dismissed on 27.1.2011.

5. In short, it is claimed that grant of permission by the court to the respondents-plaintiffs under Section 91 CPC to institute a suit against the petitioners-defendants is nothing but providing a handle to arm-twist the petitioners whereas the respondents-plaintiffs neither have any cause of action nor have any locus standi to file the suit, as they do not even belong to the vicinity of the property in dispute.

6. Counsel for the respondents, on the other hand, has urged that parameters of allowing of application under Section 91 CPC have duly been complied with and the court considering the entire matter had arrived at a conclusion that a case for institution of suit by the respondents in terms of

Section 9 and 91 CPC was made out. It is claimed that application by the petitioners-defendants for revocation of permission to institute suit, interalia, under Section 91 CPC vide order dated 16.12.2010, was rightly dismissed on 27.1.2011.

7. At the threshold itself, it may be noticed that application under Section 91 CPC is to be adjudicated confining consideration to the averments made in the application under Section 91 CPC without any reference to other pleadings or material or evidence of the defendants. Since pleadings of the respondents-plaintiffs alone were to be seen and were gone into before grant of permission under Section 91 CPC, there is nothing wrong in order of 2.4.2011. It is neither a case of omission of facts nor of consideration of material other than contained in the application for the purpose. Pleadings as also documents to be propounded by the respondents could not have been considered by the lower court.

8. Looking from another angle, even application for revocation of order dated 2.4.2011 (Annexure P-4) was not legally sustainable. Revision against the said order, of course, could be preferred.

9. Even if the pleas taken by the petitioners are considered independently, merely in a pending litigation, the respondents had filed an application under Order I Rule 10 CPC for their impleadment as parties and was dismissed on 16.12.2010 and which order was affirmed by this court in civil revision petition on 27.1.2011, ipso facto is no ground to reject prima-facie claim of the respondents of institution of the suit under Section 91 CPC. Similarly, hitherto pendency of yet another litigation which was later withdrawn ipso facto should not be allowed to act as a deterrent with the respondents to file the present litigation in terms of Section 9 and 91 CPC.

10. At this stage, reference may be made to Section 91 CPC which is as is given on the next page:

“91. Public nuisances and other wrongful acts affecting the public.— (1) in the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted, (a) by the Advocate General, or (b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act. (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

11. When focussed attention is paid to this provision, it transpires that Section 91(1) CPC provides a dynamic concept for action in matters of public nuisance or other wrongful acts etc. It is the cause and interest of public which is to be secured. It remains a fact that neither the litigation earlier instituted by the respondents nor filing of application under Order I Rule 10 CPC is any substitute for the considerations to be weighed at the time of decision on application for seeking leave of the court for bringing a suit under Section 91 CPC.

12. Consideration while deciding application under Order I Rule 10 CPC are always different. Pleas such as the plaintiff is a dominus litus etc. are to be evaluated for deciding application under Order I Rule 10 CPC. If contents as also cause of action of application under Order 1 Rule 10 CPC is not commensurate with the contents and cause of action of the main suit, in which such application is filed, then there would not be any chance of success of application under Order I Rule 10 CPC. In short, considerations for evaluating merits of application under Section 91 CPC are entirely different than those which are available for deciding application under Order I Rule 10 CPC.

13. If the petitioners have legally constructed the building as they claim after obtaining all necessary statutory permissions and have

legitimately raised the building, there is nothing for them to fear, but summary dismissal of application under Section 91 CPC is not legally permissible.

14. Moreover, it is a matter of evidence to be adduced by the parties that public nuisance and other wrongful acts affecting the public have been caused or not? At this stage it can not be said that the building has been constructed by the petitioners after obtaining necessary statutory provisions from the concerned authorities.

15. In view of the above discussion, finding no jurisdictional error in the impugned orders for invoking Article 227 of Constitution of India, this revision petition, being without any merit, is dismissed.

May 28th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes