IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.420 of 2014
Date of decision:09.01.2015

Poonam Sharma & others .....Petitioners

Versus

Narinder Kumar Aggarwal & others .....Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sanjay Tangri, Advocate, for the petitioners.

None for the respondents.

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G.S.Sandhawalia J. (Oral)

Prayer in the present revision petition, filed under Article 227 of the Constitution of India, is for setting aside the order dated 05.09.2013 whereby the application of the petitioners-defendants No.7 to 12, under Order 7 Rule 11 CPC, has been rejected. The Trial Court, while passing the impugned order, has came to the conclusion that the plaintiffs are not party to the impugned sale deeds and thus, being the non-executant of the sale deeds and not seeking possession and he is not liable to pay *ad valorem* Court fees. Merely because he was a witness in one of the sale deeds he would not be said to be an executing party to the sale deed. Reliance has been placed upon the judgment of the Apex Court in ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh & others 2010 (2) CCC 510***.

On the issue of bar of *res judicata* and Order 2 Rule 2 CPC, since it was submitted that an earlier Civil Suit had been filed by the plaintiffs, which was dismissed on 23.04.2009, it was noticed that it was a suit for permanent injunction and therefore, the essential ingredients of Section 11 CPC were not fulfilled. On the issue of limitation, it was held that the same is a mixed question of law and facts and at this stage, it could not be said that the suit was barred by limitation.

Counsel for the petitioners has been at pains to submit that the substance of the suit is to be seen and whether the suit has been properly valued or not and the plaintiffs are liable to pay *ad valorem* Court fee. Reliance has been placed upon the judgment rendered by this Court in ***Om Parkash Vs. Indrawati 2002 (2) PLR 853*** to submit in this regard.

After hearing counsel for the petitioner, this Court is of the opinion that the Trial Court has rightly placed reliance upon the judgment rendered in **Suhrid Singh @ Sardool Singh** (supra). The said judgment has further been explained by a Division Bench of this Court in ***Tarsem Singh & others Vs. Vinod Kumar & others 2014 (1) ICC 1054*** and has held that in case the executant of a document wants a deed to be annulled, then he is required to pay *ad valorem* Court fee and in case a non-executant seeks possession, he also has to pay the same. Relevant observations read as under:

> "5. In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-
> i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.
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> ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the

> Act.
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> iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.
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> In view of the aforesaid judgment of the Hon'ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above. The single bench judgments rendered prior to the Supreme Court judgment mentioned above run counter to the aforesaid view and thus overruled. The Reference is answered accordingly. The Single Bench judgments rendered, so far as they run counter to the aforesaid view, are thus overruled."

In such circumstances, reliance upon the case of **Om Parkash** (supra) does not merit acceptance, as contended by counsel for the petitioners, since the Division Bench has, now, further clarified the position in **Tarsem Singh** (supra). Admittedly, the possession has not been sought and as noticed by the Trial Court, the plaintiffs are not party to the sale deeds which pertain to the year 1972 onwards to 1996.

On the issue of constructive *res judicata* and Order 2 Rule 2, it is settled principle of law that the rejection of plaint is only to be done in exceptional cases and not otherwise. The Court is only to take into consideration the pleadings made in the plaint and not the defence raised. Reference can be made to the judgment of the Apex Court in ***Popat & Kotecha Property Vs. State Bank of India Staff Association 2005 (7) SCC 510*** wherein it has been held as under:

> "17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised."

In ***Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee 2012 (8) SCC 706***, the principles regarding rejection of plaint were considered and it was held that it was the duty of the Court to scrutinise the averments/pleas in the plaint and the written statement is not to be taken into consideration to see whether the case falls within the ambit of Order 7 Rule 11. Relevant observations read as under:

> "It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in Saleem Bhai & Ors. vs. State of Maharashtra and Others, (2003) 1 SCC 557, in which, while considering Order 7 Rule 11 of the Code, it was held as under:
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> "9. A perusal of Order 7 Rule 11 CPC makes it clear

> that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.....”

It is clear that in order to consider Order 7 Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others (2006) 3 SCC 100.”

Thus, the submission that there was some earlier suit filed and that it was dismissed in default and the plaintiff had given up his relief, since the earlier suit is for permanent injunction, would again be a matter to be raised before the Trial Court after the pleadings and evidence are complete.

On the issue of limitation, it is also settled that it is a mixed question of law and facts as there are several sale deeds in question and it is one of the sale deed in which the plaintiff is a witness. In such circumstances, the order passed by the Trial Court rejecting the plaint is well justified.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed. However, it is made clear that nothing said herein shall prejudice the Trial Court when deciding the case on merits.

09.01.2015 **(G.S.Sandhawalia)**
sailesh **JUDGE**