

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.5370 of 2015.

Date of Decision: 21.08.2015.

Meenakshi Gupta and others

....Petitioners.

VERSUS

Gurmeet Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashok Gupta, Advocate for the petitioners.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India read with Section 151 of the Code of Civil Produce (for short, "C.P.C.") for setting aside the order dated 30.05.2015 passed by learned Additional Civil Judge (Senior Division), Chandigarh, vide which the application under Order 7 Rule 11 C.P.C. filed by the petitioners for rejection of plaint, was dismissed.

The facts which need elaboration are that respondent-plaintiff filed a civil suit for declaration challenging sale deed No.1209 dated 13.06.2007 and sale deed No.1201 dated 13.06.2007 executed by defendant

No.4 and defendant No.3 in favour of defendant No.2 and defendant No.1 on the basis of General Power of Attorney No.4681 dated 18.12.2000 and General Power of Attorney No.4889 dated 27.12.2000 respectively, on the grounds that they were illegal, null and void and were result of fraud and misrepresentation. He also sought a decree for mandatory injunction seeking direction to the concerned authorities to cancel the sale deeds. Petitioners (defendants in the suit) filed an application under Order 7 Rule 11 read with Section 151 C.P.C. for rejection of the plaint alleging that the plaintiff had no locus standi to file the suit as he was neither the seller nor the purchaser and that the facts pleaded disclosed no cause of action in favour of the plaintiff-respondent.

The application filed by the petitioners was dismissed by learned Additional Civil Judge (Senior Division), Chandigarh, vide the impugned order dated 30.05.2015.

Feeling aggrieved by the said order passed by learned Additional Civil Judge (Senior Division), Chandigarh, the petitioners filed the instant petition.

The submissions made by learned counsel representing the petitioners have been considered.

Dealing with the objections raised by the petitioners, the findings of learned trial Court were as under:-

“On perusal of record, it can be observed that the plaintiff has filed the suit for declaration with regard to sale deeds No.1209 dated 13.06.2007 and 1201 dated 13.6.2007 said to be executed by defendants no.4 and 3 respectively in favour of defendants No.2 and 1 respectively on the basis of

GPA's which the plaintiff claims were ineffective. The plaintiff has claimed that one Mrs. Balwant Kaur Gill was owner of House No.33, Sector 9A, Chandigarh and which is subject matter of these impugned sale deeds and she had issued a cheque of Rs.55 lacs in favour of plaintiff which was dishonoured and for which the plaintiff had filed a complaint under Section 138 of Negotiable Instruments Act against her. She failed to appear and in proceedings under Section 82 Cr.P.C. she was declared proclaimed offender and under Section 83 Cr.P.C. her property was attached. As per the averments of plaint, defendants in a very collusive manner, by way of filing civil suits, got decree in their favour with regard to this House No.33, Sector 9A, Chandigarh and thus, has sought declaration that these sale deeds are on the basis of fraud upon the Court and upon the plaintiff to defeat his rights and frustrate his criminal complaint. These bundles of facts disclose cause of action and for the purpose of Order 7 Rule 11 CPC it can not be said that plaint does not disclose cause of action. Question of maintainability of suit by the plaintiff is question of law and facts. Since the plaintiff has alleged fraud and collusion of defendants in getting civil Court decrees and sale deeds as fraud vitiated by solemn acts in Courts or before the Public offices, there is cause of action in favour of plaintiff. Hence, the plaint cannot be rejected for the reason that it does not disclose cause of action. No other ground was agitated as per the application. Accordingly, the application being devoid of merits, stands dismissed."

Learned counsel for the petitioner failed to demonstrate any error of law in the order passed by learned trial Court. Indeed, the pleadings of the plaintiff are competent enough to disclose a cause of action. The acts of fraud and collusion between the defendants pleaded by the plaintiff related to the decree passed by the Civil Court and the sale deeds registered by Registrar, U.T., Chandigarh i.e. by a public authority. According to him, the defendants had obtained the decrees with regard to House No.33, Sector 9-A, Chandigarh and had got the sale deeds executed by fraud and with the sole object to defeat his legal rights and to frustrate his criminal complaint. The issues raised by the plaintiff are mixed questions of law and facts.

As per provisions of Order 7 Rule 11 C.P.C., a plaint can be rejected only where it does not disclose a cause of action; where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so; where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so; where the suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate; where the plaintiff fails to comply with the provisions of Rule 9.

Apparently, the case of the petitioners does not fall under any of the above grounds postulated in Order 7 Rule 11 C.P.C.

Thus, there being no illegality or perversity warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

21.08.2015.
jitender