

255

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

CR No.726 of 2015 (O&M)

Date of decision: March 02, 2015

Mohinder Singh Khehar

.....Petitioner

Versus

Mohinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S. Mannipur, Advocate
for the petitioner.

Mr. G.C. Shahpuri, Advocate
for respondent No.1.

SABINA, J

Petitioner has filed this petition challenging the order dated 18.11.2014, whereby application moved by the petitioner under Order 7 Rule 11 of Civil Procedure Code, 1908 ('CPC' for short) for rejection of the plaint, was dismissed.

While issuing notice of motion, following order was passed by this Court on 30.01.2015:-

“Counsel for the petitioner, inter alia, contends that one Dalip Singh had four sons and two daughters. His three sons filed a suit against the fourth son Amarjit Singh and their two sisters for seeking declaration that in view of the family settlement arrived at between the members of the family, the property left behind by Dalip Singh has devolved upon his three sons (plaintiffs therein) excluding his son Amarjit Singh and daughters. Amarjit Singh, who was arrayed as defendant no.1, did not contest the suit and an ex parte decree was passed on 31.10.1992. This decree was not challenged by Amarjit Singh during his life time as he died in the year 1997 and had attained finality. Thereafter, in the year 2011, wife of Amarjit Singh had filed the present suit to seek declaration that she along with proforma defendants no.8 to 10, who

happen to be her children, are the owners to the extent of 1/4th share of the property in dispute which was also the property in dispute in the earlier suit and has alleged in para no.10 of the plaint that the cause of action to file the present suit arose when she got the knowledge about the decree dated 31.10.1992.

Counsel for the petitioner has submitted that his application filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") has been dismissed by the trial Court only on the ground that there is no provision in the CPC for rejecting the plaint on the ground of locus standi.

Counsel for the petitioner has argued that Order 7 Rule 11(a) of the CPC provides that the Court has the jurisdiction to reject the plaint if it does not disclose any cause of action. It is submitted that the question of cause of action has not been appreciated by the trial Court as the plaintiff in the present suit has not even challenged the judgment and decree dated 31.10.1992 and has simply sought declaration of her rights. It is submitted that the plaintiff will not acquire any right in the property in dispute as the said rights have been lost by her husband in the earlier litigation.

Notice of motion for 16.02.2015.

Dasti as well."

I have heard learned counsel for the petitioner and respondent No.1 and have gone through the record available on the file carefully.

Suit in question has been filed by respondent No.1 against the petitioner and others for declaration to the effect that she was the owner of the property in question alongwith performas respondents No.8 to 10 to the extent of their share. It has been averred by the respondent No.1 in the plaint (Annexure P-10) that a fraud had been played by respondents No.6 and 7. A suit was filed by Respondents No.6 and 7 against the husband of respondent No.1, who was residing in Canada by impleading Kulwant Singh as General Power of Attorney holder of her husband. Thereafter, petitioner got an *ex parte*

decree in his favour. Case of the respondent No.1 further is that her husband was living in Canada since the year 1975-76. Petitioner in collusion with his other brothers got the decree in his favour, although, husband of the respondent No.1 had not received any summons qua the filing of the suit.

As per order 7 Rule 11 CPC, there is no doubt that plaint can be rejected, if it fails to disclose any cause of action. In the present case, respondent No.1 has specifically pleaded in the plaint that her husband had never received summons qua filing of the suit by the petitioner. Husband of respondent No.1 as well as respondent No.1 were residing in Canada. The case of respondent No.1 is that the petitioner had got *ex parte* decree in his favour in collusion with his other brother.

In the facts and circumstances of the present case, the plaint was not liable to be rejected under Order 7 Rule 11 CPC. In the present case, to reach at a conclusion as to whether the decree in favour of the petitioner was a result of a fraud or not, parties are required to lead their respective evidence.

Hence, there is no force in the submissions made by learned counsel for the petitioner. No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

March 02, 2015

m.singh