

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

Civil Revision No. 3996 of 2016 (O&M)

Date of Decision: August 27, 2016

BALBIR SINGH

-PETITIONER

VERSUS

SOHAN LAL AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.B.Goel, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

Petitioner being defendant in the suit filed an application under Order 7 Rule 11 CPC for rejection of plaint. The trial Court dismissed the application vide order dated 24.02.2016.

Petitioner has ventured to challenge the said order in the present revision petition. Plaintiffs-respondents No.1 and 2 Sohan Lal and Kuldip Singh filed a suit for declaration with consequential relief of permanent injunction. Plaintiffs-respondents No.1 and 2

purchased land from petitioner-defendant No.1 measuring 10 Kanal 9 Marlas situated in the revenue Estate of village Akbarpur Barota, Tehsil and District Sonipat along with land measuring 0 Kanal 17 Marlas situated in the revenue Estate of village Safiyabad, Tehsil and District Sonipat vide registered sale deed dated 07.07.1992. It was alleged that defendant No.1 by taking undue advantage of judgment and decree dated 26.11.1993 passed by the Appellate Court in Civil Appeal No.72 of 1991 got transferred share of the plaintiffs i.e. 10 Kanals 9 Marlas in his name through mutation No.3875 dated 31.08.2000 in an illegal manner. Said mutation was claimed to be illegal, null and void. Plaintiffs challenged the said mutation on grounds No.3(i), (ii), (iii) and (viii) as mentioned in the plaint.

In para no.4 of the plaint, it was recited that in the month of June, 2008 defendants No.1, 3 and 4 contacted the plaintiffs-respondents No.1 and 2 to exchange the possession of land measuring 10 Kanals 9 Marlas and hand over the land under sale deed dated 07.07.1992 to defendants No.3 and 4 and to take

possession of land measuring 10 Kanals 9 Marlas in the suit land as detailed in para no.1 of the plaint.

Defendant no.1 also promised to get mutation No.3875 corrected in favour of the plaintiff qua 10 Kanals 9 Marlas, possession of which was handed over by defendant No.1 to the plaintiffs in Rect. and Killa No.81//21/2(3-6), 21/2(3-19), 82//20/2(3-16) in lieu of land measuring 10 Kanals 9 Marlas, the possession of which was handed over by the plaintiffs to defendants No.3 and 4. The plaintiffs filed the suit with the cause of action which accrued to them in the month of June, 2008 when defendants No.1, 3 and 4 approached the plaintiffs for exchange of land on 11.01.2011 when the defendants threatened to transfer the land to defendant No.2. The suit was filed on 24.01.2011.

Learned counsel for the petitioner vehemently argued that in respect of mutation No.3875 dated 31.08.2000 based on judgment and decree dated 26.11.1993, the suit filed on 24.01.2011 was patently time barred.

I have considered the submissions made by learned

counsel for the petitioner to some length.

The facts with regard to father of defendant No.1 Bharat Singh got the land from father of defendant No.3 and 4 Sher Singh in oral settlement of the year 1979 and thereafter, defendant No.1 became owner of the land were the subject matter of Civil Suit No.510 of 1985 which was filed by father of defendants No.3 and 4 challenging the oral settlement in which the land between Bharat Singh and Sher Singh was the subject matter of oral settlement. Civil Suit No.510 of 1985 filed by defendants No.3 and 4 was initially dismissed by the trial Court on 21.05.1991 but the appeal against said judgment and decree was accepted by the lower Appellate Court on 26.10.1993. Defendant No.1 despite pendency of said litigation transferred 10 Kanals 9 Marlas of land to the plaintiff vide sale deed dated 07.07.1992 and then subjected the same to transfer vide mutation No.3875 dated 31.08.2000 wrongly in his name. The challenge to the mutation and accrual of cause of action in terms of para No.4 of the plaint are based on mixed question of law and facts that would be appreciated by the trial Court during trial.

The ingredients of Order 7 Rule 11 CPC cannot be attracted to such a controversy which is based on contingent factors of leading evidence to prove claims of the parties. The proposed exchange of the year 2000 has to be proved by the plaintiffs in negation to the claim of defendant No.1. The factum of proposed exchange would be gone into by the Court at the relevant stage.

In view of aforesaid, this Court is not in a position to appreciate the arguments raised by learned counsel for the petitioner at this stage, however, petitioner would be at liberty to file any other appropriate application before the trial Court, if, so advised.

In view of aforesaid, this revision is found to be devoid of merits and the same is accordingly dismissed.

August 27, 2016

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No