

Civil Revision No.4021 of 2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.4021 of 2013 (O&M)

Date of Decision: August 02, 2016

Aas Mohamad & another

...Petitioners

Versus

Sarfraj & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sachin Mittal, Advocate,
for the petitioners.

Mr.Rajesh Lamba, Advocate,
for respondent Nos.1 to 3 & 5.

Mr.Manoj Dhankar, AAG, Haryana,
for the State.

AMIT RAWAL, J.

The present revision is directed against the impugned order, whereby the application at the instance of the petitioner-defendants filed by invoking the provisions of Order 7 Rule 11 CPC seeking rejection of the plaint, has been declined.

Mr.Sachin Mittal, learned counsel for the petitioner-defendants submits that the respondent-plaintiffs in Para 1 of the plaint asserted their right by claiming themselves to be Biswedars and

Faridabad on the premise that their ancestors were allotted manure pits. He submits that the plaintiffs are none else but sons of late Noorduiddin son of Manphool, who had been shown to be allottee/biswedat at Sr.No.19. He further submits that there are 32 owners as per list and jamabandi for the year 1954-55 and out of them, 14 persons/owners either themselves or through their L.Rs filed Civil Suit bearing No.374 of 2004 titled as Alimuiddin & others Versus Gram Panchayat Village Khandawali and others for declaration with consequential relief of permanent injunction in respect of the suit property and exchange of land against (1) Gram Panchayat Village Khandawali, (2) State of Haryana through Collector; (3) Haunsa Khan son of Chahat, wherein Ashuiddin son of Manphool was plaintiff No.12. The said suit was dismissed vide judgment and decree dated 17.11.2006, which has attained finality upto this Court. The present suit has been filed by none else, as stated above, but through sons of Nooruiddin. He submits that Manphool had four sons and once one son had already availed the remedy, the other L.Rs cannot espouse their cause and in this backdrop of the matter, application, aforementioned, by invoking the provisions of clause (d) of Rule 11 of Order 7 was filed. The trial Court dismissed the same being devoid of merit. He further submits that it would be total farcical exercise in proceedings further with the trial as the suit is barred by Section 11 CPC

as the plaintiffs are claiming their right through the person, who has already been party in the previous round of litigation and, thus, prays for setting aside of the impugned order by rejecting the plaint. In support of his contention, he has relied upon the judgment rendered by the Delhi High Court in **Vinod Kumar Singh and others Versus Devraj Singh and others**, 2015(5) R.C.R. (Civil) 809.

On the contrary, Mr.Rajesh Lamba, learned counsel for respondent Nos.1 to 3 and 5 submits that for deciding/adjudication of the application under Order 7 Rule 11 CPC, only the averments in the plaint have to be seen. At the best, the documents enclosed with the plaint can be seen. However, as per the copy of the plaint (Annexure P-1), the claim does not fall in the category of clause (d) of Rule 11 of Order 7 CPC. The detailed evidence is required to be led as the mixed question of law and fact is involved and, thus, prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, clause (d) of Rule 11 of Order 7 CPC and Section 11 CPC read thus:-

“d) where the suit appears from the statement in the plaint to be barred by any law;

Section 11 CPC

“ Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

Clause (d), aforementioned, envisages that the plaint is liable to be rejected in case it is barred by law. Since provisions of Section 11 CPC put an embargo on maintainability of the suit of the same matter having been directly and substantially in issue in a formal suit between the same parties, much less under whom they or any of them claim, litigating under the same title.

No doubt, Ashuddin son of Manphool was a plaintiff in the previous suit and the plaintiffs in the present suit are the sons of Nooruddin son of Manphool and any of the L.Rs of Manphool or his sons cannot be permitted to file suit time and again. The suit was filed in the year 2011 for seeking declaration of resolution dated 9.8.1995.

Para No.1 of the plaint relied upon by the learned counsel

for the petitioners, in my view, does not bring the case for rejection of

the plaint outrightly, for, neither the copy of the previous plaint or the judgment is part of the record of the plaint and as observed above, particularly in view of the settled law, it is the averments in the plaint and the documents attached thereto have to be seen and the question whether the suit would be hit by doctrine akin to *res judicata* can be decided by framing preliminary issue.

Accordingly, the petitioner-defendants are directed to file the written statement and take up all possible objections, including the objection of *res judicata* and thereafter, after completion of the pleadings, the trial Court shall frame the issues, including the issue of *res judicata* and try the same as preliminary issue by affording two-two effective opportunities to the parties to the lis and consequential effect would be seen only after the decision.

Revision petition stands disposed of in the aforementioned terms.

August 02, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No