

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

**CR No.4423 of 2014
Decided on: 14.12.2016**

Bodh Raj

....Petitioner

Versus

Sukhwinder Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vikas Singh, Advocate
for the petitioner.

Mr. D.D. Bansal, Advocate
for respondent No.1.

REKHA MITTAL, J.

The present petition lays challenge against order dated 26.05.2014 (Annexure P6) passed by the Civil Judge (Jr. Division) Dabwali whereby application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure (in short 'CPC') for rejection of plaint has been dismissed.

Counsel for the petitioner contends that the petitioner and Tejinder Singh son of Parminderpal Singh filed Civil Suit No.486-C of 2009 on 09.09.2009 in which Jangir Singh @ Jahangir Singh father of the petitioner was arrayed as a defendant. The said suit was decided in favour of the petitioner and Tejinder Singh in respect of land measuring 10 marlas detailed in headnote of the plaint vide award dated 06.02.2010 (Annexure P2) passed by the Lok Adalat, Dabwali. Sukhwinder Singh and Jasbir Kaur children of Raghuraj Singh another son of Jangir Singh @ Jahangir Singh filed the instant suit claiming themselves to be owner in possession of land measuring 10 marlas and

they have challenged the award dated 06.02.2010 passed by the Lok Adalat in Civil Suit No.486-C/09.09.2009 by claiming that the said award has been passed against a dead person. It has further been argued that the instant application for rejection of the plaint was filed on the premise that jurisdiction of the Civil Court to entertain and try the present suit is barred under Section 22 of the Legal Services Authorities Act, 1987 (in short 'the Act') but the same has been wrongly and illegally dismissed by the trial Court. It is argued with vehemence that as the respondents/plaintiffs are claiming right in the suit property through Sh. Jangir Singh @ Jahangir Singh against whom the award dated 06.02.2010 was passed by the Lok Adalat, the respondents/plaintiffs are barred by Section 22 of the Act from challenging the said award. It is further submitted that though the award was passed by the Lok Adalat on 06.02.2010 after death of Jangir Singh in January, 2010 but prior thereto, statement of Jangir Singh @ Jahangir Singh admitting claim of the petitioner and his co-plaintiff was recorded by the Court on 10.12.2009, therefore, death of Jangir Singh @ Jahangir Singh at a later point of time would not prejudicially affect rights of the petitioner created under award dated 06.02.2010.

Another submission made by counsel is that plea taken by the respondents/plaintiffs with regard to their entitlement to the suit property on the basis of a family settlement is vague as no date, month and year of the said family settlement has been given nor it has been averred if the said family settlement was oral or otherwise. According to counsel, as the respondents/plaintiffs have basically challenged the award dated 06.02.2010 passed by the Lok Adalat which is not

amenable to challenge in view of the bar created under Section 22 of the Act, the plaint is liable to be rejected under Order 7 Rule 11 CPC.

Counsel for the respondents/plaintiffs has supported the impugned order with the submissions that an application for rejection of plaint is to be decided solely on the basis of averments raised in the plaint and none else. The respondents/plaintiffs have staked their claim to the suit property primarily on the basis of family settlement effected during lifetime of Sh. Jangir Singh @ Jahangir Singh whereby the house in dispute fell to the share of plaintiff and defendant No.2 and they were put in possession as owners or in the alternative have become owner in possession of the said house being legal representatives of late Sh. Jangir Singh. It is further argued that the award dated 06.02.2010 passed by the Lok Adalat has been challenged on various grounds detailed in sub-paras (i) to (viii) of para 8 of the plaint and one of the grounds raised by the respondents is that the defendants played fraud on the Court as they did not disclose regarding death of Jangir Singh besides the allegation that Jangir Singh was an old person who was unable to differentiate between good and bad and the defendants procured the impugned award by taking advantage of old age, sickness and feeble mind of Jangir Singh. It is argued with vehemence that challenge to an award passed by the Lok Adalat on the ground of fraud is available only before the Civil Court because fraud is a question of fact requires evidence for adjudication.

I have heard counsel for the parties, perused the paperbook particularly the various annexures appended with the petition.

Indisputably, application for rejection of plaint is to be

decided exclusively on the basis of averments set up in the plaint and no other materials can be taken into consideration. The respondents/plaintiffs have claimed their right to the suit property on the basis of a family settlement having been arrived at during the lifetime of Sh. Jangir Singh wherein the house in question is stated to have fallen to the share of the plaintiff and defendant No.2 who were put in possession as owners. It has further been averred that Bodh Raj Singh and Tejinder Singh were separated by giving money to them out of Hindu Undivided Family (HUF) funds by Jangir Singh @ Jahangir Singh and they built their houses separately. In the alternative, the respondents/plaintiffs have claimed themselves to be owners in possession of the house in dispute on the basis of inheritance to Sh. Jangir Singh. They have also challenged the award dated 06.02.2010 passed by the Lok Adalat on various grounds raised in para 8 of the plaint. While deciding the question of suit being barred by law by invoking the provisions of Section 22 of the Act, the Court certainly cannot examine the correctness or otherwise of the allegations qua family settlement raised in para 3 of the plaint. The plaint can be rejected either as a whole or the same has to be entertained and comparative merit of claims of the parties is to be decided at the time of final adjudication including a particular plea being not tenable for lack of jurisdiction with the Court. In this view of the matter, the trial Court has rightly negated plea of the petitioners for rejection of the plaint.

So far as challenge to the award on the ground of alleged fraud, this Court would refrain from commenting upon jurisdiction of the trial Court to examine the award from that point of view lest it may

cause prejudice to either of the parties at the time of final adjudication of the suit on merits.

For the foregoing reasons, the petition fails and is accordingly dismissed.

14.12.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No