

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

Civil Revision No.4848 of 2016

Date of Decision: 04.11.2016

Digamber Singh and others

.....Petitioners

Vs

Anil Dutt Sharma and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vikas Kumar, Advocate
for the petitioners.

Mr. Suresh Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners/defendant Nos.2 to 5 have challenged the order dated 22.04.2016 (Annexure P-6) passed by Civil Judge (Jr. Divn.) Faridabad whereby the application filed by them under Order 7 Rule 11 CPC was dismissed.

[2]. Brief facts of the case as gathered from the record are that a civil suit for mandatory injunction with permanent injunction was filed by respondent No.1 against the petitioners/defendant Nos.2 to 5 and others. Para nos.8, 9, 10 and 16 of the plaint are reproduced hereasunder:-

“8. The defendant no.1 illegally executed sale deed bearing no.6157 dated 07-9-2006 in favour of defendant No.2 and sale deed no.7598 dated 13-10-2006 in favour of defendant no.3 and sale deed no.7398 dated 11-10-2006 in favour of defendant no.4 and sale deed no.7399 dated 11-10-2006 in favour of defendant no.5 illegally without any right, title and interest because plots pertaining to the said sale deed belongs and fall to the share of the deceased father of the plaintiff and defendant no.6 & 7 as per the family settlement deed effected between the defendant no.1 and deceased Sh. B.D. Sharma, deceased Sh. Raj Kumar for which the defendant no.1, has no right title or interest to do so.

9. That the plots pertaining to the above said sale deed fall in the share of the plaintiff and the defendant no.6 & 7 who have succeeded to the rights of the deceased Sh. Kali Krishan.

10. That the act of the defendant no.1 executing the sale deed in favour of the defendants no.2 to 5 is illegal, null and void and not binding upon the rights of the plaintiff and defendant no.6 & 7 and same is illegal null and void and nonest in the eyes of law.

16. That a civil suit filed by the deceased father of the plaintiff against the defendants no.2 to 5 was withdrawn due to some technicality and a civil suit filed by the wife of the defendant no.1 which is collusive with defendants no.1 to 5 and against the said suit the plaintiff is preferring an appeal against the order dated 16.02.2016.”

[3]. The prayer clause of the plaint reads as under:-

“It is therefore most respectfully prayed that a decree for mandatory injunction may kindly be passed in favour of the plaintiff against the defendant no.2 to 5 who are illegally constructing the boundary wall on the plots falling to the share of the plaintiff as inherited after the death of deceased father of plaintiff and defendant no.6 & 7 further directing the defendant no.2 to 5 to remove the illegally raise boundary wall and make the plot in the same condition as it was before illegally constructing the same further defendants no.2 to 5 and may kindly be restrain by way of decree of permanent injunction as they are acting in collusion with the defendant no.1 from making third party interest further transferring the said plots as the impugned sale deeds are not binding on the rights of the plaintiff.

Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also awarded in favour of the plaintiff and against the defendant no.1- to 5. Prayed accordingly.”

[4]. Prior to filing of the aforesaid suit, father of the plaintiff i.e. Kali Kishan Sharma had also filed a civil suit No.241 dated 19.12.2008/18.04.2012 for declaration with a consequential relief of permanent injunction. The following prayer was made in the said suit:-

“It is therefore, most respectfully prayed that a decree of declaration to the effect that the sale deeds no.6157 dated 7.9.2006, 7598 dated 13.10.2006, 7398 dated 11.10.2006 and 7399 dated 11.10.06 executed by the defendant no.1 in favour of defendant no.2 to 5 fully detailed and described in para no.1 of the plaint are illegal,

null and void and nonest in the eyes of law and not binding upon the rights, title interest or authority of the plaintiff be also passed in favour of the plaintiff and against the defendants and further a decree of permanent injunction thereby restraining the defendants from interfering into the peaceful possession of the plaintiff or creating any third party interest in the suit property be passed in favour of the plaintiff and against the defendants.

Any other order or further relief which this Hon'ble court deems fit and proper may also be awarded in favour of the plaintiff and against the defendants with costs."

[5]. After the death of aforesaid Kali Kishan Sharma, his legal heirs including Anil Dutt Sharma were brought on record and they contested the suit which was originally filed by their father. Learned counsel for the plaintiff in the said suit made a statement to the effect that he did not intend to pursue the suit and his statement was reduced into writing. At the stage of rebuttal and final arguments, the said civil suit No.241 dated 19.12.2008/18.04.2012 was got dismissed as withdrawn vide order dated 28.08.2015.

[6]. In the present suit for mandatory injunction with consequential relief of permanent injunction, an application under Order 7 Rule 11 read with Section 151 CPC was filed by defendant Nos.2 to 5 for rejection of plaint on the basis of earlier suit. The said application was contested by the respondent

No.1/plaintiff.

[7]. I have heard learned counsel for the parties.

[8]. The main plank of the argument of learned counsel for the petitioners is that the suit is barred under Order 23 Rules 1 and 3 CPC on account of withdrawal of earlier suit in which liberty was not granted to institute a fresh suit on the same cause of action. The second argument of learned counsel is that the suit is barred under Order 2 Rule 2 CPC. The third argument is that the suit is barred by limitation as the sale deeds were executed in the year 2006 and the present suit came to be filed only in the year 2016.

[9]. It is a settled principle of law that at the stage of proceedings in terms of Order 7 Rule 11 CPC only averments made in the plaint are to be seen. The earlier suit was withdrawn not on account of any written application. No technical grounds were pleaded, but the fact remains that the suit was allowed to be withdrawn on the statement of learned counsel for the plaintiff therein. The said suit was not decided on merits. The earlier suit was for declaration and permanent injunction whereas the present suit was for mandatory injunction with permanent injunction as a consequential relief. In the previous suit a declaration was sought that the sale deeds were

invalid. In the instant suit, injunction has been sought from raising any construction over the suit property.

[10]. In order to substantiate the plea under Order 23 Rule 1 CPC and Order 2 Rule 2 CPC, the evidence is required to be appreciated. The pleadings of earlier suit are to be led in evidence and thereafter the Court would assess the evidence on merit. At the stage of proceedings in terms of Order 7 Rule 11 CPC, no such blanket presumption can be drawn viz-a-viz. the similarity of causes of action between the previous suit and the present suit. The averments made in the plaint cannot be extended to mean something which is totally dependent upon the future course of action by the parties. Similarly plea of limitation is also a mixed question of law and facts. The limitation can possibly be explained with the accrual of cause of action, for which evidence would be necessary for holding such a proposition.

[11]. Learned counsel for the petitioners of course relied upon **R. Rathinavel Chettiar and another vs. V. Sivaraman and others, 1992(2) PLR 459.** The proposition held in the aforementioned judgment cannot be applied at the stage of proceedings in terms of Order 7 Rule 11 CPC. The over all situation can be assessed only after proving the pleadings of

earlier litigation. At the most, the defendant can pray for framing of preliminary issue on the ground of suit being barred under any provision of law. For deciding the preliminary issue, evidence is required to be led.

[12]. Similarly the facts involved in **Anand Dev & Anr. vs. Suraj Bhan, 2012(2) Civil Court Cases 433** do not strictly apply to the present case. The said case was also decided on merits after leading evidence by both the sides.

[13]. In considered opinion of this Court, the grounds on which the plaint is sought to be rejected cannot be appreciated at this stage. All the grounds taken by the petitioners are subject matter of appreciation only after leading evidence and proving the pleadings of the earlier suit.

[14]. In view of aforesaid, no indulgence can be granted in this revision petition and the same is accordingly dismissed.

November 04, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No