

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.7513 of 2016

Date of Decision.09.11.2016

Amita Vaish and another

.....Petitioners

Vs

Rakesh Kumar Saini

.....Respondent

Present: Mr. Iqbal Singh Saggu, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioners are aggrieved of the impugned order dated 16.09.2016 whereby the application moved under Order 7 Rule 11 CPC for dismissal of the plaint seeking the prayer, which is reproduced as under, has been dismissed:-

“ a)That the ld Court may be pleased to declare the sale deeds bearing registration No.20274 and 20275 dated 27.2.2007 of the office of sub registrar, Faridabad as null and void qua the plaintiff.

b) That both the ld. Court may be pleased to restrain the defendants from removing any of the machinery, fittings & fixtures of the impugned property and to do any act, which may diminish the value of the impugned property.

c) any other relief, which this ld Court may deem just and proper in the facts and circumstances of this case.”

Mr. Saggu, learned counsel appearing for the petitioners submits that prior to the filing of the aforementioned suit, the plaintiff had filed a suit for mandatory injunction. An application under Order 7 Rule 11 CPC was filed whereby he was called upon to pay the court fee and the revision petition against the same was also filed, instead of filing the court

(Annexure P-3) and the appeal filed against the same also met with the same fate vide order dated 17.09.2010 (Annexure P-4).

Now the present suit filed is also not maintainable as hit by Order 2 Rule 2 CPC. All these aspects have not been taken into consideration by the Courts below, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that issue/controversy raised by the defendants cannot be decided in an application filed under Order 7 Rule 11 CPC. The petitioners-defendants are at liberty to file the written statement and take the preliminary objection.

At this stage, Mr. Saggu, learned counsel appearing for the petitioners states that preliminary objections in the written statement have already been taken. The petitioners may be given liberty to move an application to frame the issue qua maintainability of the suit as hit by provisions of Order 2 Rule 2 CPC. In case the issues are not framed, the Court shall frame the issue as mentioned above and thereafter, shall decide the same as preliminary issue by leading evidence by affording two-two opportunities to each one of the parties.

In view of the aforementioned, the impugned order under challenge is modified and the revision petition is disposed of with the above liberty.

(AMIT RAWAL)
JUDGE

November 09, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No