

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2083 of 2016(O&M)
Date of Decision-12.09.2017

Brijeshwar Swaroop and others ... Petitioners

Versus

Adish Aggarwal and others ... Respondents

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

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioners.

Mr. Rajiv Kataria, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. This revision petition has arisen from the order dated 09.02.2016 passed by Civil Judge (Junior Division), Safidon, vide which application under Order 7 Rule 11 CPC for rejection of plaint filed by defendants No.1, 4 to 6 was dismissed.

[2]. Plaintiffs filed a suit for declaration to the effect that they are owners in possession of agricultural land measuring 8 kanals, 10 marlas being 1/6th share each out of total land measuring 25 kanals, 10 marlas as shown in the plaint in the revenue estate of Safidon, District Jind vide *jamabandi* for the year 2009-10 and as per sale deed dated 25.09.1957 and mutation No.1056. Plaintiffs and defendants are claimed to be in joint possession of the land measuring 25 kanals, 10 marlas being joint Hindu family property being the coparcener of the family of Rattan Chand son of Kali Ram.

Declaration has also been sought in respect of sale deed dated 28.04.2000 in the name of defendant No.4 on the basis of registered sale deed dated 25.09.1957 and mutation No.1056 to be part of the share of defendant Nos.1, 5 and 6 and not binding upon the rights of the plaintiffs and defendants No.2, 3, 7 and 8 with consequential relief of permanent injunction, restraining the defendants from dispossessing the plaintiffs from the joint possession in the suit property and changing the nature of the suit land forcibly and also restraining them from raising any kind of construction in the suit property and further for restraining them from alienating the suit property or creating any encumbrance over it.

[3]. Plaintiffs claimed their right being of coparceners/members of joint Hindu family property as shown in the plaint. They claimed that the property was purchased from the joint funds of Kali Ram in favour of his grand-son defendant No.1/Brijeshwar Swaroop. Plaintiffs claimed their birth right being male member of the 4th generation of Kali Ram. Kali Ram by constituting the joint Hindu family, purchased various properties from nucleus funds of the joint family. He gave managerial power to his son Vijay Ram due to his old age. Kali Ram had purchased the suit land along with other properties as Karta through his son Vijay Ram in the name of all his sons from 1956 to 1960. Vijay Ram got registered all the sale deeds in his name and other brothers namely

Duni Chand, Tarlok Chand, Sheetal Parkash and defendant No.1 got the property in his name in place of his father Rattan Chand.

[4]. Rattan Chand was a Government servant and he died on 19.07.1983. Duni Chand retired as Dy-Excise and Taxation Commissioner, Haryana and died on 09.01.2005. Vijay Ram was looking after the agricultural properties and other affairs of the joint family being Karta and was also Lambardar of the village. He died on 12.04.1991. Tarlok Chand and Sheetal Parkash are still alive. Tarlok Chand retired as Engineer-in-Chief from State of Haryana, whereas Sheetal Parkash was studying in matric at the time of purchase of the property in the year 1956. Rattan Chand after his death on 19.07.1983 left behind three sons i.e. defendants No.1 to 3 and five daughters namely Kusum Lata, Saroj, Sharda, Sarla Bala and Indu. All the daughters are married. Plaintiffs are the sons of defendant No.3/Anil Kumar Aggarwal, who are born on 15.07.1987 and 24.01.1990 respectively. Plaintiffs have also pleaded the details of properties which were purchased from the joint funds from 1956 to 1960. The details have been given in para No.7 of the plaint.

[5]. Plaintiffs have also given cause of action for filing the present suit in para Nos.14 and 15 of the plaint, which are reproduced hereasunder for ready reference:-

“14. That since defendant No.1 has openly started claiming himself to be the sole owner of the property, as the prices of the land have increased manifold and he has become dishonest, which compelled defendant No.3 to file a suit and

the suit was rejected under Order 7 Rule 11 CPC on technical reasons. Though a litigation between defendants No.1 and 3 is still going on in the Hon'ble Pb. & Hr. High Court at Chandigarh.

15. That after the filing of suit No.335 dated 17.09.2011, by defendant No.3 against defendant No.1, defendant No.1 filed another suit No.364 dated 22.10.2011 against defendant No.3 and the plaintiffs, the said suit was filed for injunction. In which Hon'ble Court of Ld. ACJ (SD) Safidon passed order of injunction against the plaintiffs and father of plaintiffs. But the order of Ld. ACJ (SD) Safidon is still pending for adjudication in civil appeal titled as Anil Aggarwal etc. Vs. Brijeshwar Swaroop which is pending for 31.08.2015 in the Hon'ble Court of ADJ Jind."

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

[7]. Learned counsel for the petitioners argued that the sale deed dated 25.09.1957 in favour of defendant No.1 has been challenged after about 58 years of its execution. A civil suit was filed by father of the plaintiffs in the year 2011. The plaint was rejected under Order 7 Rule 11 CPC and an appeal against the order of the trial Court was rejected by the Lower Appellate Court. Now in the suit, plaintiffs have pleaded coparcenary right with their birth in the property. Plaintiffs have claimed that rejection of plaint in a suit filed by the father of the plaintiffs does not debar the plaintiffs from filing the suit in question and the suit is within limitation.

[8]. Learned counsel vehemently submitted that after the sale deed dated 25.09.1957, a mutation was sanctioned on 10.05.1958

and since then, defendant No.1 has been recorded to be owner in possession of the suit land. Father of the plaintiffs i.e. Anil Kumar Aggarwal was born on 24.09.1960. Kali Ram had died on 09.11.1974. Plaintiffs No.1 and 2 were born on 15.07.1987 and 24.01.1990 respectively after the death of Kali Ram, therefore, there is no cause of action available to the plaintiffs to maintain the suit in question. Anil Kumar Aggarwal filed a previous suit on 17.09.2011 with a similar plea which was rejected under Order 7 Rule 11 CPC on 10.04.2012. An appeal filed against the said order was also rejected on 08.10.2012. A civil revision is statedly pending in the High Court without any stay.

[9]. Learned counsel relied upon **T. Arivandandam Vs. T.V. Satyapal and another, AIR 1977 Supreme Court 2421** and contended that when the plaint is false and vexatious, it is the duty of the Court to see non-disclosure of a clear right to sue and the Court should exercise power under Order 7 Rule 11 CPC and gross abuse of the process of the Court should not be allowed to be repeated when the plaint is manifestly vexatious and meritless. The clever drafting thereby creating illusion of a cause of action has to be nipped at the very inception with exemplary cost to deter unscrupulous litigants. Learned counsel by referring to **The Church of Christ Charitable Trust & Educational Charitable Society represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee,**

2013(1) LJR 501 contended that when the plaint is manifestly vexatious and meritless in respect of non-disclosure of clear right to sue, the trial Court should exercise power under Order 7 Rule 11 CPC at any stage of the suit.

[10]. Learned counsel also relied upon **Commissioner of Wealth Tax, Kanpur etc. Vs. Chander Sen etc., 1986 AIR (SC) 1753, Prem Bhatnagar Vs. Ravi Mohan Bhatnagar and others, 2006(2) RCR (Civil) 660, Uttam Vs. Saubhag Singh and others, 2016(2) RCR (Civil) 309, Bhanwar Singh Vs. Puran and others, 2008(2) RCR (Civil) 99, Raghubir Singh Vs. Dalip Singh and another, 2004(2) RCR (Civil) 595** and contended that frivolous litigation dragging the adversary has to be buried at the initial stage in terms of Order 7 Rule 11 CPC and the grandson who took the birth after the death of his grand-father has no right to claim partition in view of Section 6 of Hindu Succession Act 1956. A suit for declaration as to joint possession in respect of coparcenary property by the sons during lifetime of their father is not maintainable. It is a circuitous method for seeking the partition of the property during lifetime of the father. After the death of Karta, if the property is partitioned by sons and daughters in proportionate share, then the property loses character of ancestral property in terms of Section 8 of Hindu Succession Act and the son born thereafter acquired no interest in the property by birth.

[11]. As against this, learned counsel for the respondents relied upon **Vaish Aggarwal Panchayat Vs. Inder Kumar and others, 2015(4) Law Herald (SC) 3165, Surjit Kaur Gill and another Vs. Adarsh Kaur Gill and another, 2014(2) Civil Court Cases 95 (SC)** and contended that the suit could not be dismissed on the ground of limitation without proper pleadings, framing of issue on limitation and taking evidence. The question of limitation is a mixed question of law and facts. On *ex facie* reading of the plaint, it could not be held that the suit was barred by limitation. Learned counsel further relied upon **Civil Revision No.5642 of 2015** titled **Ritu Chaudhary @ Ritu Jaglan Vs. Satvinder Singh Chaudhary and another** decided on 20.01.2016 to the same effect. Learned counsel also relied upon **Bhag Singh Vs. Amar Singh Bhela, 2000(4) RCR (Civil) 670** and contended that a coparcener has a right by birth in the ancestral/coparcenary property and his right cannot be ignored even by the Karta except for legal necessity and for good management and for the benefit of the estate. It is always a matter of evidence whether the plaintiff has been able to prove the coparcenary nature of the property or not, but definitely the plaint discloses a cause of action and the application under Order 7 Rule 11 CPC cannot be entertained. Even dismissal of the earlier suit will not debar the subsequent suit under Section 11 CPC or under Order 2, Rule 2 CPC because successive cause of action in favour of the plaintiff cannot be made subject matter of Order 7 Rule 11 CPC.

[12]. Cause of action has not been defined in the CPC. Every suit pre-supposes the existence of a cause of action. The cause of action means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove in order to succeed in the suit. If there is no cause of action, the plaint has to be rejected. Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the decision of the Court. By referring to **Sher Singh and others Vs. Gamdoor Singh, 1997(2) RCR (Civil) 39 (SC)**, learned counsel emphasized upon the ancestral property/joint Hindu family property and contended that in case of ancestral property, it is a coparcenary property and every member on birth is entitled to share in coparcenary property. Even self-acquired property can be blended with joint family property by means of hotchpotch, enveloping the character of coparcenary property. All these factors are dependent upon the quality of evidence to be led by the parties at trial.

[13]. Having considered the arguments of learned counsel for the parties at length, I find that at the stage of proceedings under Order 7 Rule 11 CPC only averments in the plaint are to be seen. Plaintiffs have claimed birth right in the suit property being coparcener and also claimed that sale deed dated 25.09.1957 was executed from joint Hindu family funds and the same was purchased in the name of defendant No.1 by the joint Hindu family headed by Karta Kali Ram great grand-father of the plaintiffs. At

present, the pleas sought to be raised are non-disclosure of cause of action and the suit being barred by limitation. Non-disclosure of cause of action is dependent upon so many factors. It involves bundle of facts. Right to sue is dependent upon material facts which are to be alleged and proved by the plaintiffs in the suit. Such facts can only be proved by leading evidence. No strict opinion can be formed at this juncture of the suit on the factum of non-disclosure of cause of action. The factum of dismissal of earlier suit filed by father of the plaintiffs can only be proved by proving the pleadings of earlier suit. The claim with regard to coparcenary is also dependent upon material to be proved on record by way of evidence. At this stage of Order 7 Rule 11 CPC, no such plea can be entertained with regard to non-disclosure of cause of action and non-constitution of coparcenary with birth right of the plaintiffs and the property purchased in the name of defendant No.1 was not from the joint Hindu family funds. The pleadings are to be proved with reference to evidence. The plea of limitation is also a mixed question of law and facts. Plaintiffs have challenged the sale deed dated 25.09.1957 in favour of defendant No.1 on the ground of their birth right being coparceners. Plaintiffs have claimed title on the basis of pre-existing right and sought declaration from the Court on that basis.

[14]. In view of Article 110 of the Limitation Act, if a person is excluded from joint Hindu family property and he wants to enforce

the right in respect of his share, then he can file suit within 12 years when such exclusion came to his knowledge. As per pleadings in the plaint, plaintiffs have pleaded that they got cause of action to file the present suit in the year 2011 when the suit for permanent injunction qua the suit property filed against them by defendant No.1 and defendant No.1 refused to distribute the sale proceeds of the sale deed No.96 dated 28.04.2000.

[15]. On due consideration of all the aforesaid facts and circumstances, I find that the application under Order 7 Rule 11 CPC is lacking on the parameters as laid down under the statute. No such indulgence can be granted for acceptance of plea of rejection of plaint at this stage. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

12.09.2017
Prince

Whether reasoned/speaking

Yes/No

Whether Reportable

Yes/No