

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

Civil Revision No.4081 of 2017

Date of decision : 05.07.2017

Pirithi Singh and others

.....Petitioners

Versus

Chander Bhan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Kanwardeep Singh, Advocate for petitioners.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 02.05.2017 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Karnal, whereby the application moved by the petitioners/defendants under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC' – for short) has been dismissed.

2. In the application filed by the petitioners under Order 7 Rule 11 CPC, it was pleaded that respondent No.1/plaintiff has concealed the facts from the Court. As a matter of fact, the land in dispute is situated at the bank of Yamuna River. Previously it was part of State of U.P. and in the year 1960, due to diversion of the river course, it fell in the jurisdiction of the State of Haryana. The consolidation in village Dhakwala took place in the year 1964-65 and during the consolidation some part of the land was given on lease for 20 years to Dhakwala

Cooperative Society (here-in-after called the 'Society') for cultivation by the scheduled caste persons. The Society gave about two acres of land to the poor persons for cultivation. The said period of lease of 20 years has expired. This Court has decided the matter against the Society. Thus, the said Society had no right, title or concern with the land which was given on lease to the Society. The lease period has already expired, therefore, the Society cannot induct any person as a member of the Society in view of the judgment passed by this Court. Respondent No.1/plaintiff cannot take shelter of the lease by the Society. Thus, the suit filed by the respondent No.1/plaintiff is not legally maintainable. It has been prayed that the same may be dismissed under Order 7 Rule 11 read with Section 151 CPC.

3. This application was contested by respondent No.1/plaintiff on the grounds *inter alia* that the plaintiff has disclosed the genuine cause of action. He has affixed the proper court fees and the suit is not barred by or under any law. The plaintiff is in possession of the suit property as a member of the Society. Hence, he has legal right to retain the possession of the same, unless the lease granted to the Society is not cancelled by the competent authority and the suit is maintainable. With these pleas, the plaintiff pleaded for dismissal of the application.

4. The learned trial Court vide impugned order dated 02.05.2017 dismissed the application filed by the petitioners. Hence, this revision petition.

5. I have heard learned counsel for the petitioners and have

carefully gone through the paper-book.

6. Learned counsel for the petitioners contended that the petitioners and respondents are real brothers. He contended that the compulsory lease in favour of the Society was only for a period of 20 years. The said lease period has already expired. After the expiry of the lease period, the Collector is required to restore the possession to the owners as per Section 7 Sub Section 1 of the East Punjab Utilisation of Lands Act, 1949 (hereinafter called the 'Act'). He contended that the owners of the land had filed an application under Section 7 (1) of the Act for restoration of the possession as the lease pertaining to the land had expired but the same could not be done as the true identity of the owners and their respective shares were not identified. For that, the Collector was required to make an inquiry. He further contended that even the Financial Commissioner Revenue, Haryana has held that the Society and its members have no right to the suit property as the lease period has already expired. The tenants through the Society had even approached this Court vide Civil Writ Petition No.15639 of 2004. Even the same was dismissed as withdrawn vide order dated 19.11.2004. He further contended that Baru Ram the father of the plaintiff had no right to surrender the membership in favour of the plaintiff vide Will dated 30.09.2011. Respondent No.1/plaintiff is claiming to be the member of the Society, whereas the said Society has become non-existent as per the order of the Financial Commissioner Revenue dated 10.08.2004 (Annexure P-2). He further contended that the petitioners and respondents are real brothers.

Their father had no right to execute any Will with respect to the suit property in favour of the respondent No.1/plaintiff. He further contended that the petitioners and performa respondent are also in possession of the suit property being the sons of the lessee.

7. He further contended that the suit filed by the respondent No.1/plaintiff for injunction is not maintainable. He has no locus standi to file such suit as the lease period in favour of the Society has already expired. The father of the plaintiff was not competent to surrender the membership of the non-existent Society by way of Will. Thus he contended that suit filed by respondent No.1 is not maintainable and he had no locus standi to file the suit.

8. I have duly considered the aforesaid contentions.

9. The law is well settled that while deciding the application under Order 7 Rule 11 CPC the Court has to taken into consideration only the averments in the plaint. In case ***R.K. Roja Vs. U.S. Rayudu and another 2016(3) R.C.R. (Civil) 810*** the Hon'ble Apex Court has laid down as under:-

*“5. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7, Rule 11 of the CPC can be filed at any stage, as held by this Court in **Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others, 2006(1) R.C.R. (Rent) 138 : (2004) 3 SCC 137** ... “The trial court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. ...”. The only restriction is that the consideration of the application for*

rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7, Rule 11 (a) to (f) of the CPC, the same has to be rejected.”

10. The same legal position has been reiterated by the Hon'ble Apex Court in case ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal 2017(3) Recent Apex Court Judgements (R.A.J.) 111***. In view of the ratio of law laid down by the Hon'ble Apex Court in the cases referred above, at the stage of deciding the application under Order 7 Rule 11 CPC the Court can only take into consideration the averments mentioned in the plaint as a whole. The plaint cannot be rejected on the basis of allegations made by the defendants in the written statements or the application for rejection of plaint.

11. In the instant case, respondent No.1 has filed the simple suit for permanent injunction on the plea that his father was the member of the Society and being the member of the society was in possession of the suit land as the same was lease out to the Society by the Collector somewhere in the year 1962 for reclamation of the non-cultivable land. In the year 2015, his father surrendered the membership in favour of the plaintiff and on the request of his father, the aforesaid Society accorded approval vide resolution No.1 dated 02.06.2015 to induct the plaintiff as member of the said Society in place of his father. His father has also executed a registered Will dated 04.08.2016 in his favour giving all

ownership and possessory rights. His father has expired on 08.09.2016. Prior to his death, the plaintiff was in cultivating possession of the suit land along with his father and now after the death of his father he is in cultivating possession of the suit land. His crops are standing therein. It is further pleaded that the defendants, who are his real brothers had threatened him to forcibly take the possession thereof.

12. Thus, in the plaint, the respondent No.1/plaintiff is claiming relief of permanent injunction simply on the ground that earlier his father was in cultivating possession of the suit property and later he surrendered membership of the Society in his favour and he came into possession of the suit property along with his father during his lifetime. On the basis of his possession, he is seeking protection against his forcible dispossession at the hands of the petitioners and perform respondent No.2/defendant.

13. Order 7 Rule 11 CPC reads as under:-

“Rejection of plaint— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law ;
- (e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9 :
[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

14. The careful perusal of the averments in the plaint does not attract any clause of Order 7 Rule 11 CPC. It cannot be stated that the plaint does not disclose any cause of action or that the suit is under valued and requisite stamp papers have not been affixed. As the plaintiff is claiming injunction on the basis of his possession, it cannot be stated that the suit is barred by any law.

15. This fact could not be disputed by learned counsel for the petitioners that the petitioners and respondent No.2 are not the true owners of the suit property. The contentions raised by learned counsel for the petitioners that the lease period of the Society has already expired and the Society has become non-existent so the plaintiff could not have been inducted as a member of the Society, that the father of the parties had no right to execute the Will in favour of the plaintiff and that they are also in possession of the suit property, are the disputed questions of law and facts which can only be ascertained on appreciation of the evidence to be adduced by the parties, which is totally beyond the scope of Order 7 Rule 11 CPC.

16. Thus, keeping in view my aforesaid discussion, I do not find any illegality or legal infirmity in the impugned order calling upon any interference by this Court.

17. Resultantly, the present revision petition is without any merit and the same is hereby dismissed.

05.07.2017

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No