

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5256 of 2015

Date of Decision:15.03.2017

Jai Ram

.....Petitioner

Versus

Beer Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Alok Mittal, Advocate,
for the petitioner.

Mr.Sudhir Aggarwal, Advocate,
for the respondents.

RAMESHWAR SINGH MALIK, J.(Oral)

Present revision petition filed by the defendants under Article 227 of the Constitution of India, is directed against the order dated 29.07.2015 (Annexure P-6) passed by the learned trial Court, whereby application of the petitioner-defendants moved under Order 7 Rule 11 of the Code of Civil Procedure (for short “the CPC”), was dismissed.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the orders of partition passed by the concerned revenue authorities were ex parte. Respondents-plaintiffs filed the application for setting aside the ex parte orders, but even the said application was also dismissed by the concerned revenue authorities. Plaintiffs-respondents had no opportunity to contest

the case before the revenue authorities on merits. Even the appeal filed by the plaintiffs before the higher revenue authorities was also dismissed.

Thus, having been left with no other option, plaintiffs filed the present suit for declaration to the effect that the revenue authorities neither followed the procedure laid down under the Punjab Land Revenue Act, nor the plaintiffs were granted an opportunity to contest the case and the orders passed by the revenue authorities were null and void. Defendants filed their application under Order 7 Rule 11 CPC seeking rejection of the plaint primarily on the ground that jurisdiction of the civil court would be barred.

However, keeping in view the totality of facts and circumstances of the case, the learned trial Court came to the conclusion that the plaint was not liable to be rejected because under the peculiar fact situation obtaining in the case in hand, the civil court would have the jurisdiction. The cause of action was found as a mixed question of law and fact. Finally, application moved by the petitioner-defendants under Order 7 Rule 11 CPC was dismissed vide impugned order.

During the course of hearing, learned counsel for the respondents-plaintiffs has pointed out that once the defendants-petitioner themselves have filed their counter-claim before the learned trial Court, they have conceded this fact that the learned civil court would have the jurisdiction to entertain and try the civil suit as well as counter-claim. When confronted on this crucial aspect of the matter, coupled with the serious contradiction in the case of the petitioner-defendants, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It also goes without saying that even if civil suit is dismissed on merits, defendants can still press their counter-claim and the same can be decreed in

favour of the defendants. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

A bare perusal of the impugned order would show that the learned trial Court has considered each and every relevant aspect of the matter before passing the impugned order. Further, rules of procedure are meant for advancing the cause of justice. Discretion under Order 7 Rule 11 CPC is not to exercise mechanically but the learned trial Court is supposed to exercise its jurisdiction judiciously. It also goes without saying that each case is to be considered and decided as per its own peculiar facts and circumstances.

Every Court of law must make an endeavour to decide the litigation between the parties on its merits instead of technicalities. So far as the fact situation obtaining on record of the present case is concerned, learned counsel for the plaintiffs-respondents has been found well-justified in contending that once the defendants themselves have filed their counter-claim, which can be treated to be an independent suit, it has been conceded by the defendants themselves that the learned trial Court will have the jurisdiction. In this view of the matter, this Court is of the considered opinion that the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of

merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant revision petition stands dismissed, however, with no order as to costs.

March 15, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No