

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

CR No.5043 of 2017
Date of decision :22.08.2017

Ghanshyam Rathaur

...Petitioner

Versus

Meena Rani @ Neena and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shiv Kumar, Advocate for the petitioner.

ANIL KSHETARPAL, J.

CM No.17221-CII of 2017

Allowed as prayed for. Plaint (Annexure P/1) is taken on record.

Main Case

Defendant-petitioner has filed the present revision petition against order dated 25.05.2017 dismissing the application under Order 7 Rule 11 of the Code of Civil Procedure (CPC) for rejection of the plaint.

Plaintiff had filed a suit for declaration with a consequential relief of permanent injunction with the assertion that she is daughter of late Shri Rattan Lal who died on 10.11.2010. It is further claimed that the aforesaid property was ancestral property of the parties. Plaintiff and defendant Nos.1 to 6 are successors of late Shri Rattan Lal, however, defendant-petitioner is refusing to acknowledge the rights of the plaintiff and proforma defendant Nos.2 to 6. Plaintiff further challenged a decree dated 27.08.1996 passed in a civil suit titled as ***“G.S. Rathaur vs. Rattan Lal”***

Defendant filed an application under Order 7 Rule 11 of the

Code of Civil Procedure (CPC) with the assertion that as per proviso to Sub-section (1) of Section 6 of the Hindu Succession Act, 2005, which is prospective in nature, plaintiff had no right before the date of amendment in the Hindu Succession Act, 1956.

Learned trial court after appreciating the facts available on the file, rejected the application vide order dated 25.05.2017. Relevant extract of the order reads as under:-

“4. Heard the ld. counsels for the parties and perused the record carefully. It is settled law that while deciding application under Order 7 Rule 11 CPC only the averments in the plaint are to be seen and not the written statement. Perusal of the plaint shows that property is ancestral property of the parties to the suit and the cause of action arose on 05.02.2016 when the defendant no.1 disclosed the fact of having obtained the impugned judgment and decree dated 31.08.1996, in respect of the suit property. Hence, it cannot be said that there is non-disclosure of cause of action. Therefore, plaint cannot be rejected under Order 7 Rule 11(a) CPC.

5. Further, the contention of the defendant/applicant that the suit is barred by law, under proviso to section 6(1) of the Hindu Succession (Amendment) Act 2005, can be considered and would apply to the given facts only after adjudication of certain facts including the genuineness of the consent decree in

question, nature of the suit property as well as the date of death of the father of the parties. These facts can be adjudicated upon only after appreciation of evidence on these points. Further the judgments relied upon by both the parties would be only relevant once these facts are adjudicated upon after appreciation of the evidence on these points. Hence, the plaint cannot be rejected even under Order 7 Rule 11 (d) CPC. Therefore, the present application is, hereby, dismissed.”

It is clear from the reading of the order reproduced above that the learned trial court after considering all aspects of the matter, dismissed the application.

Learned counsel for the petitioner has reiterated the assertions made in the application.

I have considered the arguments of learned counsel for the petitioner and with his able assistance gone through the copy of the plaint, application under Order 7 Rule 11 of the Civil Procedure Code as well as the impugned order.

Application under Order 7 Rule 11 of the Civil Procedure Code (CPC) has to be decided only on the basis of assertions made in the plaint. A reading of the plaint would show that the plaintiff had filed a suit claiming succession to the property of late Shri Rattan Lal, father of the parties. Plaintiff had also challenged a decree of the civil court dated 31.08.1996. Plaintiff had specifically stated that cause of action accrued in favour of the plaintiff firstly on 05.02.2016, when defendant No.1 disclosed the fact that he has obtained a decree dated 31.08.1996. In view thereof,

there is no force in the submission of learned counsel for the petitioner.

Learned counsel for the petitioner has further submitted that as per the amendment brought in the Hindu Succession Act by Act of 2005, the present suit is barred. He submits that the aforesaid amendment has been held to be prospective. He, therefore, submits that the plaintiff has no locus standi to challenge the judgment and decree passed by the court.

I am afraid that the contention of learned counsel for the petitioner cannot be accepted. At this stage while deciding the application under Order 7 Rule 11 of the Code of Civil Procedure only the assertion made in the plaint are to be examined. It will be open for the petitioner to take such objection as permissible in law. However, on this ground, the plaint cannot be ordered to be rejected.

For the reasons recorded above, I do not find any good ground to interfere with the order passed by the learned trial court.

Accordingly, the revision petition is dismissed.

22.08.2017
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No