

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5416-2017

Date of Decision:- 17.08.2017

Sawaran Kaur

.....Petitioner

Versus

Ramesh Inder Singh @ Gurmaheshinder Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ravi Dutt Sharma, Advocate,
for the petitioner.

RITU BAHRI, J. (Oral)

Present revision petition under Article 227 of the Constitution of India for setting aside the order dated 09.05.2017 (Annexure P-4), passed by learned Civil Judge (Jr. Division), Kaithal, whereby an application under Order 7 Rule 11 CPC for rejection of plaint, filed by petitioner/defendant No.1, has been dismissed.

As is evident from the record that learned Civil Judge (Jr. Division), Kaithal, after taking into consideration the facts and all the contentions pertaining to appreciation of evidence, has dismissed the application filed by petitioner/defendant No.1, by virtue of order dated 09.05.2017, which in substance is as under: -

“It is the case of plaintiffs that in a partition proceeding Sanad Taksim has been passed behind back of plaintiffs in connivance with AC 1st grade,

therefore, they have challenged the partition proceedings being illegal, null and void on the ground of fraud being played upon the plaintiffs. The plaintiffs are residing in UK and on summons, wrong name of plaintiff, parentage and address was shown to avoid contest of the suit whereas defendants very well known the address and parentage of the plaintiffs. It is further alleged that *ex parte* proceedings have been initiated against the plaintiffs whereas the same are unlawful as plaintiff is son of Gurdyal Singh and in petition for partition, the plaintiff is shown as Rajwant son of Hardyal Singh. It is further alleged that in the naksha alif, the name of plaintiffs were rightly written as son of Gurdyal Singh, thus, defendants are aware of parentage of plaintiffs. On the other hand, the defendants alleged that the jurisdiction of civil court is specifically barred in the matters pertaining to partition of the agricultural land. Defendants have further then placed reliance upon order passed by Hon'ble Punjab & Haryana High Court passed in CRM titled as "Sharanjit Singh and Anr. Vs. State of Haryana" wherein, Hon'ble Punjab & Haryana High Court has passed direction to revenue official to conclude partition proceedings expeditiously and not more than six months and to deliver the possession in terms of partition orders. Plaintiffs have challenged the instrument of partition primarily on the ground of fraud. In well celebrated case titled as "State of Haryana Vs. Vinod Kumar" 1986 PLR 222, Hon'ble Court has held that where the procedure followed a prescribe under the statute has not been adhered to, the jurisdiction of civil court to adjudicate on the matter and to detriment whether the legality or validity of the order passed by tribunal or the authority could not be denied and it is to be seen whether fundamental principle of judicial procedure have been followed or not. The Hon'ble Apex Court in "Dhruv Green Field Ltd. Vs. Hukam Singh 2002(6) SCC 416" Hon'ble Court has held that civil court would retain its jurisdiction when the order complained of is nullity.

6. In the light of the above said authorities, pleadings of plaintiffs are examined. For the purpose of deciding the application u/o 7 rule 11 of CPC, the pleadings of the parties are to be seen. Plaintiffs have alleged that the partition proceedings have been proceeded with behind his back and they were proceeded against *ex parte* fraudulently. The parentage and address is deliberately shown to be wrong. The defendants were duty bound to provide correct address and correct names of plaintiffs and in absence thereof, defendants still persis on continuing with the proceedings shows the malafide intention of defendants. The perusal of documents annexed with

the plaint reveal that in the petition before AC 1st grade, the name of plaintiff is being shown Rajwant Singh son of Hardyal Singh whereas in the list of proprietors, name of plaintiff is shown as Rajwant son of Gurdyal Singh and thus, clearly, the parentage of plaintiffs have been wrongly mentioned, meaning thereby, the name of plaintiff is wrongly mentioned. Plaintiff Rajwant further placed reliance upon his passport showing his address to be at UK. Since, parties are co-sharers therefore, it will be difficult to imagine that defendants may not be aware of the fact that plaintiff Rajwant is residing abroad. The proceedings before AC 1st grade shows that order is being made behind a party whose rights are jeopardized deliberately. Thus, the civil court jurisdiction is not barred in such like circumstances and in light of the authorities placed reliance upon. Accordingly, the application in hand sans merits and is hereby stands dismissed”

After hearing the learned counsel for the petitioner, going through the above-said judgment, this Court of the considered view that learned Civil Judge (Jr. Division), Kaithal appears to have examined the matter in the right perspective and dismissed the application. Moreover, learned counsel for the petitioner did not point out any legal infirmity or illegality in the impugned order, so as to interfere, in exercise of revisional jurisdiction of this Court under Article 227 of the Constitution of India.

Since there is no merit in the present revision petition, therefore, the same is hereby dismissed as such.

August 09, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No