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

**Civil Revision No.669 of 2017
Date of Decision: 14.12.2017**

YUDHISTER

.....Petitioner

Vs

AMAN AND OTHERS

....Respondents

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

Present: Mr. Sudhir Aggarwal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 12.12.2016 passed by the Civil Judge (Jr. Divn.) Gurgaon vide which application under Order 7 Rule 11 CPC for rejection of the plaint was dismissed.

[2]. Brief facts are that plaintiffs filed a suit for declaration and permanent injunction to the effect that plaintiffs No.1 and 2 were the minors and respondent No.3 was the widow of deceased Satpal, who died on 22.08.2006. After the death of Satpal, the plaintiffs were ignored by the family and the defendants were involved in grabbing the share of the plaintiffs which was inherited by them from their forefathers. Total 24

Kanals 14 Marlas of land was under the ownership of great grandfather of plaintiffs No.1 and 2 namely Richhpal. As per the case set up in the plaint, the plaintiffs pleaded in para no.11 of the plaint in the following manner:-

“11. *That the malafide intention of Sh. Kartar Singh became clear where the Kartar Singh filed a Suit No.856 dated 19.7.1989 before the Sr. Sub Judge, Gurgaon for declaration praying the declaration of the ownership and in possession of the land measuring 16 kanal 14 Marla in respect of the khewat No.24 Khatoni No.35 Rect. No.56 Killa No.19/3 (2-17) 22/1(2-3) measuring 5 Kanal Khewat No.25 Khata No.36 Rect. No.26, Killa No.15 (7-9) and Khewat No.26 Khata No.37 Rect. No.25 Killa No.3/3(0-11) 4/2 (2-18) 7/2 (0-16) measuring 445 Km in all 16 Kanal 14 Marla out of the said disputed property. The said land wrongly firstly got mutated in the name of mother neglecting the wife and other legal heirs of the deceased by the plaintiff Sh. Kartar Singh. The copy of the said suit/plaintiff No.886 Dt. 18.7.1989 is attached herewith as Annexure P-7. The said suit was got decreed on 25.7.1989 on the next date of hearing and no legal services of the notice were effected by the court to all the joint owners of the land not the widow of the deceased was served and presented in the court.”*

[3]. The grandfather of the plaintiffs No.1 and 2 namely Hoshier Singh filed a civil suit for declaration which was decreed

by the trial Court on 28.11.2002. First Appeal filed by the defendants was allowed by the lower Appellate Court vide judgment and decree dated 05.02.2004. The judgment and decree of the first Appellate Court was maintained in RSA No.1094 of 2004 by the High Court and even in SLP No.9876 of 2010 filed before the Hon'ble Apex Court. The aforesaid facts have been pleaded by the plaintiffs in para nos.14 and 15 of the plaint which are to the following effect:-

- “14. *That the grandfather of the plaintiff named Sh. Hoshiar Singh, filed a Civil Suit No.53 dated 15.6.1999 for declaration Ref. Hoshiar Singh Vs. Kartar Singh on 16-03-1994 and the said suit of the plaintiff was deceased (decreed) vide Judgment and decree dated 28.11.2002 by the court of Sh. Harish Gupta sub Judge, Gurgaon. The copy of the plaint Suit No.530 dated 15.6.1999 is attached herewith as Annexure P-9 and the copy of the Judgment and decree dated 28.11.2002 is attached herewith as Annexure P-10.*
15. *That the 1st appeal was filed by the defendant in the court of District Judge, Gurgaon. Which was decided vide order dated 5.2.2004. The copy of the order/Judgment in appeal No.91 dated 10.12.2002 passed on dated 5.2.2004 is attached herewith as Annexure P-11. The second appeal No.1094 of 2004 was decided vide order/Judgment dated 25.2.2010 by the Hon'ble Punjab and Haryana High Court at Chandigarh.*

The copy of the Judgment/order dated 25.2.2010 is attached herewith as Annexure P-12.

The copy of the order/Judgment in S.L.P. No.9876 of 2010 filed by the appellant/petitioner CC9876/2010 was decided on 19.7.2010 is attached herewith as Annexure P-13."

[4]. Learned counsel for the petitioner submitted that out of total land measuring 24 *Kanals* 14 *Marlas*, 7 *Kanals* 9 *Marlas* of land comprised in *Khasra* No.26/15 was acquired by the Government. In respect of apportionment of compensation petition under Section 30 of the Land Acquisition Act (for short 'the Act') was filed. Though the pleadings have been made in para no.19 of the plaint, but the ultimate decision of the said petition was not pleaded. Learned counsel further submitted that on the day of filing of the suit itself i.e. 16.03.2013, the petition under Section 30 of the Act was also dismissed by the Additional District Judge, Gurgaon.

[5]. I have heard the submission made by learned counsel for the petitioner.

[6]. Notice of motion was issued on 21.02.2017 for 11.05.2017. Thereafter the case was adjourned to 11.09.2017. Respondents No.1 and 2 being minors were impleaded through respondent No.3 in the suit as well as in the present revision petition. The service was duly effected upon respondent No.3.

However, none appeared on behalf of the respondents on 11.09.2017 and the case was adjourned for today. Today also there is no representation on behalf of the respondents.

[7]. It is settled principle that for consideration of application under Order 7 Rule 11 CPC only averments made in the plaint are to be seen. Plaintiffs themselves have pleaded the past litigation between the parties and the litigation arising out of the apportionment of compensation of share holders.

[8]. Since the plaintiffs themselves have pleaded the past litigation in para nos.14, 15 and 19 of the plaint, therefore, past litigation is an admitted fact between the parties. Having lost the litigation upto the Hon'ble Apex Court, the plaintiffs cannot be allowed to deny the plea of *res judicata* between the parties, which is one of the ground in terms of Order 7 Rule 11(d) CPC.

[9]. For the reasons recorded hereinabove, the present revision petition is allowed and the impugned order dated 12.12.2016 passed by the Civil Judge (Jr. Divn.) Gurgaon is hereby set aside. Consequently plaint is rejected in terms of Order 7 Rule 11 CPC.

December 14, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No