

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 7064 of 2016 (O&M)

Date of decision : 11.10.2017

Raghubir Singh

.....Petitioner(s)

Versus

Jai Bhagwan Saini and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Kunal Mulwani, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This revision has been filed by the defendant as his application filed under Order 7 Rule 11 CPC had been dismissed.

The basic facts necessary for disposal of the revision are being given. The plaintiff and the defendants are legal heirs of late Rehtu Ram. The plaintiff filed a suit laying challenge to the decree dated 09.02.1976 and it was pleaded to be collusive. The plaintiff was seeking declaration and joint possession of properties and plot allotted under the oustee quota. He was also seeking directions to the defendants to pay back 1/7th share of compensation received by defendant no.1 from HUDA, consequent upon acquisition of their land. The plaintiff was asserting that the property was ancestral and he had a right in it by birth.

The defendants filed their written statement. In the written statement filed by defendants no.3 to 5, legal objections regarding maintainability, cause of action, non-joinder, estoppel, limitation, resjudicata were raised. It was pleaded that the suit was based on fraud and the property was not ancestral and defendant no.1 had acquired share in the property by Civil Court decree and Rehtu Ram had suffered a decree in 1981 regarding his half share in favour of Raghbir Singh and Raghbir Singh became the full owner. It was pleaded that the plaintiff fell in bad company and Rehtu Ram asked all his sons to sever all connections with him. It was pleaded that a civil suit had been filed by the plaintiff and some suits were filed by Raghbir and a compromise was effected in 1989. It was pleaded that plaintiff along with defendant no.4 attacked and caused injuries to Sewa Ram defendant and a case was registered and the plaintiff along with others was convicted and an appeal was filed which was disposed of in 1999. It was pleaded that the plaintiff filed another suit in 2003 which was compromised and the plaintiff had admitted that the property was self-acquired property of Rehtu Ram.

Defendants no.1, 3 and 5 moved an application seeking rejection of the plaint on the plea that the suit had been filed without giving any details and without paying proper Court fee. It was pleaded that the plaintiff had no cause of action and earlier a suit had been filed in 1988 where a compromise was effected and the suit was barred by limitation and the plaint had been cleverly drafted to avoid payment of Court fee and it was in fact a suit for possession and recovery of compensation.

The plaintiff filed its reply and pleaded that defendant no.1 had concealed the amount of compensation received by him and the plaintiff was claiming his right since the property was ancestral. It was pleaded that the decree had been obtained by fraud and suit was not barred by limitation. It was averred that the alleged compromise was not signed or agreed by him and it was obtained by fraud.

The trial Court dismissed the application holding that the issues could only be examined after the parties had led the evidence and the issue of limitation was a mixed question of law and fact and it was yet to be proved whether any compromise had been effected.

I have heard the counsel for the petitioner.

The submission on behalf of the petitioner is that the plaintiff was seeking declaration without seeking the relief of possession and a suit for declaration was not maintainable and the plaint has been cleverly drafted and it should have been rejected as the plaintiff had no cause of action. It was urged that the plaintiff was seeking recovery of the amount received as compensation and therefore, he was to pay the Court fee and the suit was also barred by *res judicata*. It was urged that the suit was bad for non-joinder of necessary parties and the trial Court had wrongly dismissed their application. Reliance was placed upon ***Mehar Chand Das Vs. Lal Babu Siddique and others 2007(2) RCR (Civil) 628, Church of Christ Charitable Trust & Educational Charitable Society, Vs. M/s. Ponniamman Educational Trust 2012(3) RCR (Civil) 811, T. Arvandandam Vs. T.V. Satyapal 1977 AIR (SC) 2421, Devinder Kaur Vs.***

Sher Singh & others, CR-6459-2016, DOD 06.10.2016 (P&H), Hukam Singh and others Vs. M/s Rajdhani Land and Finance and others 2016(2) RCR (Civil) 369 and Mohan Lal Sondhi and another Vs. Surinder Parbhakar and others 2011(1) Law Herald 788 and Punjab Wakd Board, Ambala Cantt. Vs. Harbans Singh 1997(4) RCR (Civil) 603.

A plaint can be rejected on the grounds which are spelt out under Order 7 Rule 11 CPC. A reading of the provisions make it clear that if the plaint does not disclose a cause of action or if the relief claimed is under valued or not properly valued or if it is barred by law then the powers under Order 7 Rule 11 CPC can be exercised.

It is clear that in order to consider Order 7 Rule 11 CPC, the Court has to look into the averments in the plaint. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the pleas taken in the plaint at that stage. The plea taken by the defendants in the written statement are wholly irrelevant. These principles have been reiterated in *Raptakos Brett & Co. Ltd. Vs. Ganesh Property 1998(2) RCR (Rent) 353 : 1998(4) RCR (Civil) 208 : (1998)7 SCC 184 and Mayar (H.K.) Ltd. and others v. Owners & Parties, Vessel M.V. Fortune Express and Others, (2006)3 SCC 100.*

In the case in hand, the defendant is seeking rejection of the plaint on legal grounds and which can be adjudicated only after evidence has been led by both the sides. I am satisfied that the principles which govern Order 7 Rule 11 CPC do not apply to the facts of the present case. It does disclose a cause of action. With respect to other objections raised as to

whether there was a compromise or any admission by the plaintiff and whether it was barred by *res judicata* or limitation these are questions upon which evidence shall have to be led as these are mixed questions of law and fact.

As regards the payment of Court fee is concerned, the defendant did not disclose in the written statement as to how much compensation had been received, therefore, this fact will have to be adjudicated after the material is brought on record.

The petitioner was asked to place on record the issues. I find that specific issue has been framed in this regard and onus of the issues have been placed upon the defendant. The issue of maintainability can only be addressed after a complete trial. There is no infirmity in the finding. The plaint could not have been rejected on the grounds alleged. The Court will finally adjudicate upon the issue of Court fee but at the appropriate stage.

The petition is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

11.10.2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No