

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

-.-

CR 8006 of 2017
Date of decision: 15.11.2017

Tehal Singh

..... *Petitioner*

Versus

Kangan Khan and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Ms Raina Sabharwal Thakur, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 11.10.2017 (Annexure P6) whereby application filed under Order VII Rule 11 of the Code of Civil Procedure (in short, CPC) has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed suit for possession by way of specific performance of agreement to sell with relief for permanent injunction against Avtar Kaur and others and the same was decreed ex parte vide judgment and decree dated 23.11.2010. The decree attained finality as defendants in the suit did not file appeal. Later, the petitioner filed application for execution of the decree that also stands fully satisfied. Still later, Kangan Khan-respondent No. 1 who has been brought forward by pro forma respondents/defendants No. 2 and 3 filed the instant suit for permanent injunction restraining the petitioner and others

from dispossessing/interfering in peaceful possession of land measuring 39 bighas, detailed in headnote of the plaint. It is argued with vehemence that as the petitioner is in possession of the land in question, a false suit has been filed by a henchman of Avtar Kaur and Sukhdev Singh in order to cause harassment to the petitioner, therefore, the plaint is liable to be rejected being without any cause of action.

I have heard counsel for the petitioner, perused the paper book and the order impugned.

Indisputably, Kangan Khan is not a party to the decree passed ex parte in favour of the petitioner on the basis of agreement to sell purported to be executed by defendants No. 1 and 2 and Baldev Singh (since deceased). The plaintiff has claimed himself to be in possession of the suit property and sought injunction against his forcible dispossession. The application under Order VII Rule 11 CPC is to be decided on the basis of averments made in the plaint and documents relied upon by the plaintiff whereas plea raised in the written statement is not relevant for deciding application under Order VII Rule 11 CPC.

Perusal of the plaint does not substantiate plea of the petitioner that the plaintiff has no cause of action to file the suit against the defendants. As has been rightly held by the trial Court, at this stage, it is difficult to record factual findings that the respondent/plaintiff has filed the suit at the behest of defendants No. 1 and 2 namely Avtar Kaur and Sukhdev Singh. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly

dismissed in limine.

However, nothing stated herein before shall be construed as an
expression of opinion on merits of the case.

(Rekha Mittal)
Judge

15.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No