

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

CR-8967-2017 (O&M)
Date of decision: 20.12.2017

Harsh Lata

...Petitioner

Versus

Dinesh Chand Aggarwal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Saurabh Arora, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 30.05.2017 passed by the Civil Judge (Jr. Div.), Panchkula whereby application under Order 7 Rule 11 of the Code of Civil Procedure (in short 'CPC') has been dismissed.

Counsel for the petitioner has submitted that Sh. Dinesh Chand Aggarwal, plaintiff in the suit is the real brother of the petitioner and has staked claim to the moveable property, subject matter of the suit on the basis of Will dated 30.11.2002 purported to be executed by Late Sh. A.C. Aggarwal, father of the plaintiff and defendants No.1 to 4. It is further submitted that the petitioner filed an application under Order 7 Rule 11 CPC (Annexure P6) for rejection of plaint raising certain issues including that of Panchkula Court lacking jurisdiction in view of the provisions of Section 20 CPC. It is further submitted that the Court below has disposed

of the application by passing a sketchy order in which there is not even reference to plea of the petitioner with regard to territorial jurisdiction of the Court as the Court has held that the questions, whether the plaintiff has concealed true and material facts, suit without cause of action, suit being bad for non-joinder and misjoinder of parties are factual disputes to be decided on the basis of issues and evidence.

Perusal of the order impugned substantiates plea of the petitioner that the Court below has disposed of the application with the observations that all the contentions raised in application relate to issue of fact. Further held that it is an issue of fact whether the plaintiff has concealed true and material facts, has no cause of action and the suit is bad for non-joinder and misjoinder of parties. In the order, there is no reference to the issue raised in para 3 of the application with regard to territorial jurisdiction of the Court.

As a matter of fact, the issue with regard to territorial jurisdiction of the Court could be raised by filing an application under Order 7 Rule 10 CPC and not under Order 7 Rule 11 CPC. However, once the petitioner had raised the issue of territorial jurisdiction of the Court, mere reference to a wrong provision would not absolve the trial Court to answer that issue one way or the other. In the given circumstances, it is expedient in the interest of justice that the present petition is disposed of but without prejudice to right of the petitioner to file an appropriate application under Order 7 Rule 10 CPC raising the question of territorial

jurisdiction of the Court at Panchkula

For the foregoing reasons, the petition is disposed of. However, the petitioner may file an application under Order 7 Rule 10 CPC raising only the question of territorial jurisdiction of the Court. In case such an application is filed by the petitioner, the same shall be decided by the Court on its merits without being influenced by the order impugned. The Court shall put its best efforts to decide the application, if filed, expeditiously.

20.12.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No