

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

CR No.1024 of 2017(O&M)

Date of Decision:05.09.2018

**M/s A.R. Casting Pvt. Ltd. and others Petitioners
Versus**

Ramesh Kumar Bansal Respondent

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

Present:Mr. Rakesh Chopra, Advocate
for the petitioners.

Mr. S.S. Tiwana, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 02.11.2016 passed by Civil Judge (Junior Division), Amloh whereby the application filed by the petitioners for rejecting the plaint was dismissed.

[2]. Plaintiff/respondent filed a suit under Sections 37 and 38 of the Specific Relief Act for permanent injunction, restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property.

[3]. An application was filed by the defendants under Order 7 Rule 11 CPC for rejection of plaint for want of proper Court

fee. Following grounds were taken in the application under Order 7 Rule 11 CPC:-

“a) As per the mandatory provisions of Transfer of Property Act no one can become owner of immoveable property worth more than Rs.100/- in the absence of duly stamped and registered transfer deed, thus the plaintiff cannot claim to be the owner in possession of the suit property on the mere basis of alleged agreement dated 30.11.2013.

b) Since the plaintiff claims the aforesaid alleged agreement dated 30.11.2013 as Biana for the suit property & since 2-3 months fixed for execution & registration of sale deed as per clause No.4 of said agreement & since the same had expired upto February 2014 & as such mere suit for permanent injunction as claimed in the present suit is not maintainable & thus the suit is hit by Section 41(h) of Specific Relief Act.

c) The alleged Panchayati settlement pleaded in para No.2 of the plaint is an unregistered and unstamped document allegedly conveying the rights of ownership to the plaintiff. Thus the aforesaid document is inadmissible in evidence & does not create any right, title or interest in favour of the plaintiff.

d) The present suit is a clever device on part of the plaintiff to avoid payable stamp and court fee on the plaint running into lacs as per the market value of 130 biswas for claiming ownership thereof.”

[4]. The grounds on the basis of which application was filed, in my considered opinion, cannot be appreciated at the stage of Order 7 Rule 11 CPC. The transfer deed has to be proved with reference to its execution at the appropriate stage. The plea of transaction being bad on account of registration would be gone into by the trial Court at the relevant stage. Similarly, the agreement being agreement to sell of the suit property and incorporation of Clause No.4 of the agreement can only be done by the trial Court at the relevant stage. The expiry of time upto February 2014 and its effect would be seen by the trial Court on the plea of both the parties. A simplicitor suit for permanent injunction would show that the sale deed in question has not been challenged by the plaintiff, claiming any ownership, therefore, affixation of Court fee would not require. The plea of non-maintainability of the suit was never pleaded in the application by the defendants/petitioners. The heading of the application itself would show that the same was filed for rejecting the plaint for want of proper Court fee. Even otherwise, the plea of non-maintainability of the suit cannot be decided at this stage and it would be highly debatable as to the plea falling under any provision of Order 7 Rule 11 CPC. Similarly, the alleged Panchayati settlement and clever pleadings in the plaint cannot be answered at this stage of Order 7 Rule 11 CPC. The suit, if any, filed for specific performance would be decided

according to its own merits.

[5]. Presently, a simplicitor suit for permanent injunction without seeking any title on the basis of sale deed, in my considered opinion, cannot be held to be barred under Order 7 Rule 11 CPC. The ratio laid down in **Ajay Enterprises Ltd. Vs. Municipal Corporation of Delhi, 1998(3) AD (Delhi) 89** would not be attracted to the facts of the present case as the plaint cannot be held to be manifestly vexatious and meritless at this stage.

[6]. In view of above, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

September 05, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No