

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-2120-2018 (O&M)

Date of decision: 02.04.2018

Smt. Vijay Kumari

..... Petitioner

Versus

Murti Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Amit Gupta, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

1. Through this revision under Article 227 of the Constitution of India, challenge has been laid to the order dated 30.01.2018 (Annexure P-4) of the trial Court, Patiala, whereby the application of petitioner-defendant No. 3 under Order 7 Rule 11 read with Section 151 CPC was dismissed.

2. Briefly stated, respondent No. 1-plaintiff filed a suit to declare her in joint possession to the extent of 45 sq. yards along with her vendees in some specific area of the land comprising khasra No. 6059/4163/2558/1249, situated across Badi Nadi, Patiala, boundaries of which have been detailed in the head note of the plaint (Annexure P-1) along with prayer for recovery of use and occupation charges @ ₹ 5000/- per month during the pendency of suit. Before filing the written statement, petitioner-defendant No. 3 moved an application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint, on the ground that the suit filed by respondent No.1-plaintiff was not maintainable being filed without impleading all the co-sharers.

3. After hearing both the sides, the trial Court dismissed the said application of the petitioner-defendant No. 3 vide order Annexure P-4, impugned herein.

4. Learned counsel for petitioner-defendant No. 3 *inter alia* contends that the trial Court has failed to appreciate that respondent No. 1-plaintiff cannot be declared as owner and in joint possession of the land measuring 45 Sq. Yards till the entire suit land comprising Khewat No. 500, in which the suit land falls is partitioned by meets and bounds. Respondent No. 1-plaintiff was not legally entitled to seek partition of the entire land comprising joint Khewat No. 500 without impleading all the co-sharers.

5. Having heard learned counsel for petitioner-defendant No. 3, at considerable length, this Court finds the instant revision completely devoid of merits for the reasons to follow:

6. Respondent No. 1-plaintiff along with her husband, namely; Amar Dass S/o Sardari Lal, had purchased a plot measuring 269 Sq. Yards in the year 2003 with specific boundaries vide registered sale deed dated 03.06.2003. Out of the said area, respondent No. 1-plaintiff sold half share of the said plot to one Arun Kumar Kaushal-respondent No. 2 herein, in the year 2006 vide registered sale deed dated 01.09.2006, mentioning specific boundaries therein, who further sold 102 Sq. Yards out of his area to third party vide registered sale deed dated 27.09.2007. In a suit filed by vendee (Arun Kumar Kaushal) of respondent No. 1-plaintiff, for specific performance, the suit property was described with specific boundaries.

7. In her suit, respondent No. 1-plaintiff has sought relief of separate possession by way of partition of her left out share measuring 45 Sq. Yards against her vendees only to avoid multiplicity of litigation and

contradictory judgments. Therefore, no question arises for partition of entire land comprising Khewat No. 500. If petitioner-defendant No. 3 is desirous in impleading of all the co-sharers in the suit, in that eventuality, she could do so, instead of filing application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint, which in the considered opinion of this Court was filed with *mala fide* intention to harass respondent No. 1-plaintiff and to delay the suit.

8. In view of the discussion made above, the instant revision being completely devoid of any merit is dismissed.

April 02, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No