

CR No.265 of 2018

{1}

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.265 of 2018

Date of decision:05.02.2018

Saurabh

... Petitioner

Vs.

Jagdish and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Manoj Makkar, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-defendant No.1 is aggrieved of the impugned order dated 16.09.2017, whereby, the application moved under Order 7 Rule 11 of Code of Civil Procedure (in short 'CPC') for rejection of the plaint qua following relief has been dismissed:-

“It is, therefore, respectfully prayed that a decree for declaration to the effect that the sale deed bearing no.6648 dated 11.10.2004 and sale deed no.11173 dated 9.3.2005 executed by defendant no.3 in favour of defendant no.2 and sale deed bearing no.16880 dated 20.02.2015 allegedly to be executed by defendant no.2 in favour of defendant no.1 is quite illegal, null and void and not binding upon the rights of the plaintiff with a consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the suit property detailed in para 1 and 2 of the plaint in any manner may kindly be passed

in favour of the plaintiff and against the defendants. The cost of the suit be also awarded.”

Learned counsel for the petitioner-defendant No.1 submitted that for adjudication of the aforesaid application, only averments made in the plaint have to be seen. The possession is not with the plaintiff and therefore, the suit for declaration with consequential relief of permanent injunction was not maintainable and thus, prayed for setting aside the order under challenge.

I have heard the learned counsel for the petitioner-defendant No.1 and appraised the paper book.

It is settled law that averments made in the plaint have to be seen and not the defence taken in the written statement. It is yet to be decided whether it is a mixed question of facts and law or not. The Court can mould the relief. It is domain of the Court but not in the manner and mode as indicated above.

In view of the aforementioned observations, I do not find any illegality and perversity in the order under challenge, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, while upholding the order under challenge, revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No