

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

C.R.No.5489 of 2015 (O&M)

Date of Decision: May 25, 2018

Kamla Devi

...Petitioner

Versus

Mukesh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.C.B.Goel, Advocate,
for the petitioner.

Mr.Navneet Singh, Advocate,
for the respondents.

AMIT RAWAL, J.

The present revision is directed against the impugned order dated 14.7.2015, whereby the application submitted by petitioner-defendant No.2 for rejection of the plaint seeking declaration and permanent injunction, has been dismissed.

Respondent-plaintiffs instituted the suit for declaration and permanent injunction claiming the following relief:-

“It is, therefore, prayed that a decree for declaration to the effect that the partition proceedings pertaining to the suit land as detailed in para No.1 of the plaint including the impugned orders dated 25.09.08 through which Naksha KHA was passed and thereafter Naksha GHA was finalized and also impugned orders dated 19.3.2010 passed by the Ld.Commissioner and order dated 11.10.10 passed by the Financial Commissioner and subsequent entries in the revenue record on the basis of mutation no.6139 and other entries and also be declared wrong, illegal, nonest against the fundamental principles of

mode of partition and other provisions of Punjab Land Revenue Act. The defendants also be restrained through decree of permanent injunction by restraining the defendants from changing the nature of the suit land in all respect including alienation through sale, transfer, lease, mortgage and also from raising any construction and digging of earth from the suit land may kindly be passed for all times to come in favour of the plaintiffs and against the defendants, in the interest of justice.

Any other relief, which this Hon'ble Court may deem fit and property be also awarded in favour of the plaintiff and against the defendants.”

In the aforementioned suit, petitioner-defendant No.2 filed an application under Order 7 Rule 11 of CPC for dismissal of the suit on the premise that Civil Court did not have the jurisdiction as per the provisions of Section 158 (2) of the Punjab Land Revenue Act (for short “the Act”), but the same has been dismissed.

Mr.C.B.Goel, learned counsel representing petitioner-defendant No.2 submitted that the suit filed for challenging the orders of the Collector, Commissioner and the Financial Commissioner resulting into allowing of the partition proceedings was not maintainable as per the provisions of Section 158 (2) of the Act, therefore, the order of the trial Court in dismissing the application is wholly erroneous and illegal. No useful purpose would be served to continue with the suit as respondent-plaintiffs have availed the remedy of appeal and revision and, thus, prayed for setting-aside the order under challenge.

Per contra, Mr.Navneet Singh, learned counsel for respondent Nos.1 and 2 submitted that the revision petition is liable to be dismissed in view of the decision rendered by this Court in **M/s Hamir Real Estate**

(Pvt.) Ltd. Versus Rajinder Kaur, 2016 (2) PLJ 256 and Raghubir Singh Versus Jagpal Singh & others, 2015 (2) PLR 713 and, thus, urged for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Goel, for, a person effected with the orders of the revenue authorities under the Act has two options, i.e., either to challenge the order under Article 226 of the Constitution of India by filing a writ or file a suit by invoking the provisions of Section 9 of CPC. It is yet to be established whether the revenue authorities had adhered to the principles of natural justice or law or not. The aforementioned view of mine is derived from the findings arrived at in the judgments cited supra. Paras 6 and 7 of the decision rendered in Raghubir Singh's case (supra), are reproduced as under:-

“6. A five judges Bench of this Court in State of Haryana v. Vinod Kumar 1986 (1) PLR 222 held that where the procedure followed, as prescribed under the statute, has not been adhered to, the jurisdiction of the Civil Court to adjudicate on the matter and to determine whether the legality or the validity of the order passed by the Tribunal or the Authority could not be denied. Thus, in every case, it is to be seen whether the provisions of the Act have not been complied with or the statutory Tribunal had not acted in conformity with the fundamental principles of judicial procedure.

7. In such circumstances, once the issue has already been raised, it would be proper if the matter is decided after leading of the evidence. In case it is found that the Civil Court does not have jurisdiction or the procedure followed was in accordance with law, the suit can always be dismissed on that account.”

It is yet to be decided whether the principles had been adhered

to or not by the revenue authorities. In such circumstances, adverse party cannot seek the rejection of the plaint under Order 7 Rule 11 of CPC, for, would have a right to defend the suit in the manner and mode as sought to be projected in the present revision petition, for, for deciding the application under Order 7 Rule 11 CPC, only the pleadings in the plaint have to be seen.

As an upshot of the aforementioned observations, the order under challenge does not call for any interference or cannot be said to be without jurisdiction. There is no illegality or perversity in the same. Resultantly, the revision petition stands dismissed.

May 25, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No