

CR-7420-2016 (O&M)

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

CR-7420-2016 (O&M)

Date of decision : 05.12.2018

Raj Rani and others

... Petitioners

Versus

Jai Bhagwan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sukesh K. Jindal, Advocate
for the petitioners.

Ms. Salina Chalana, Advocate
for respondent No.1.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order, whereby the application of the petitioners-defendants for rejection of the plaint on the ground of maintainability, has been dismissed.

Learned counsel appearing on behalf of the petitioners-defendants submitted that the petitioners have filed the suit (Annexure P-1) for declaration with consequential relief of mandatory injunction against his brother and other defendants. As per the provisions of Section 15 of the Haryana Development and Regulation of Urban Areas Act, 1975 (in short 'the Act'), the Civil Court would not have any jurisdiction to entertain and decide the question relating to the matter falling under this Act or the Rules framed thereunder. The plaintiffs had already filed a similar suit, which is pending adjudication. All these factors, if read in cumulative, would lead to an irresistible conclusion that no cause of action accrued in favour of the

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plaintiffs to assail the findings.

Learned counsel appearing on behalf of the respondents-plaintiffs submitted that the status of the plaintiffs in the suit property, subject matter of the registered transfer deeds, was of a co-sharer. It is a mix question of fact and law, which cannot be decided summarily as it requires a detailed evidence, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the Sections 7-A and 15 of the Act, which read thus:-

"Registration of certain documents.

7A. *Notwithstanding any thing contained in any other law for the time being in force, where any document is required to be registered under the provisions of section 17 of the Indian Registration Act, 1908, purporting to transfer by way of sale or lease any vacant land having an area of less than one hectare in an urban area as may be notified specifically by the Government from time to time for the purposes of this section, no Registration Officer appointed under the above said Act shall register any such document unless the transferor produces before such Registration Officer a no objection certificate issued by the Director or an officer authorised by him in writing in this behalf, to the effect that the said transfer does not contravene any of the provisions of this Act and its rules and such no objection certificate shall be issued within ninety days of the date of receipt of the application for the same:*

Provided that—

(a) if the area of vacant land, which is proposed to be transferred does not exceed one thousand square meters, the above said no objection certificate shall be issued

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within thirty days of the date of receipt of application by the Director, where—

(i) the land is situated in a colony for which a licence has been issued under section 3 of this Act, or

(ii) the transfer proposed is as a result of family partition, inheritance, succession or partition of joint holdings not with the motive of earning profit, or

(iii) the transfer is in furtherance of any scheme sanctioned under any law ;

(b) if the above said application for grant of no objection certificate submitted to the Director or an officer authorised by him in writing in the behalf is not disposed off through an order in writing within the prescribed period of nintey days or thirty days as described in this section, the no objection certificate shall be deemed to have been granted;

(c) all applications for grant of no objection certificates shall be accompanied by the following documents :—

(i) title of land,

(ii) draft copy of registration deed ;

(iii) an affidavit to the effect that the site is covered under this section, if the area of the land does not exceed one thousand square meters.

Section 15

15. No civil court shall have any jurisdiction to entertain or decide any question relating to matters falling under this Act or the rules made thereunder."

On juxtaposition of the aforementioned provisions of the Act, it is discernible that no sale or lease of area of a land less than one hectare would be registered, whereas subject matter of the land is less than one hectare. Parameters for entertaining the application Order 7 Rule 11 of CPC are no longer *res integra*. It is only the averment in the plaint, not the

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written statement, has to be seen. The aforementioned view of mine is derived from the *ratio decidendi* culled out by Hon'ble the Supreme Court in "Soumitra Kumar Sen V/s Shyamal Kumar Sen and others" 2018 (2) RCR (Civil) 223. Since it is mix question of fact and law, a detailed evidence is required to be led.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the impugned order and no ground for interference is made out.

Resultantly, the present revision petition is dismissed.

05.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

✓
Yes/ No

Whether Reportable

✓
Yes/ No