

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

Civil Revision No.7474 of 2015
Date of Decision: November 20, 2018

William Singh Sandhu @ Diljinder Singh Sandhu

...Petitioner

Versus

Sukhwant Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. R.B.S.Chahal, Advocate,
for the petitioner.

Mr. Arshdeep Bhullar, Advocate,
for respondent No.1.

Mr. Prateek Gupta, Advocate,
for respondent No.2.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 17.09.2015 (Annexure P-4), whereby the application under Order 7 Rule 11 of the Code of Civil Procedure submitted on behalf of the petitioner-defendant for rejection of the plaint, has been declined.

Mr. R.B.S.Chahal, learned counsel for petitioner-defendant submitted that the respondent-plaintiff instituted the suit claiming declaration by laying challenge to the sale deeds mentioned at points A to E on the premise that the land was purchased by proforma defendant Jagdish Varinder Singh Sandhu, but the sale deeds were executed in the name of the plaintiff company. In fact, the plaintiff did not contribute anything towards the sale consideration. Plaintiff came into possession on behalf of the proforma defendant and, thus, the status was of an ostensible owner. Defendant No.1

is the elder brother of the proforma defendant and one Gurvinder Singh, who is the son-in-law of late Tapinder Singh, maternal uncle of defendant No.1. The said Tapinder Singh used to reside with Major General Mohinder Singh Sandhu. It was disclosed by defendant No.2 Sukhwant Singh that on 04.05.2010, defendant No.1 called him to the office of Sub Registrar, Patiala. There was no reason for defendant No.2 to doubt the intentions of defendant No.1 and Gurvinder Singh, but later on came to know that fraud had been played upon defendant No.2.

The trust reposed by the elder brother was misused by the defendants. A family settlement was arrived at which was reduced into writing on 27.03.2010 and an addendum dated 03.04.2010 was incorporated in the family settlement and as per the family settlement, one of the defendants had agreed to compensate the petitioner by getting properties transferred. A complaint was lodged before the Sub Registrar regarding undervaluation of the sale deeds, which was impounded and proceedings under Section 47-A of the Indian Stamp Act were initiated. It is not understandable as to how the plaintiff can espouse the grievance of defendant No.2 in the absence of any statement of the proforma defendant or by defendant No.2. Benami transaction as per the provisions of the Benami Transaction (Prohibition) Act, 1988 is not maintainable.

Mr. Arshdeep Bhullar, learned counsel for respondent No.1 and Mr. Prateek Gupta learned counsel for respondent No.2 supported the order under challenge by opposing the petition on the premise that the question raised in the present petition is a mixed question of law and cannot be adjudication in the manner and mode as sought to be projected. Detailed evidence is required to be led and, thus, urged this court for dismissal of the

petition.

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

As of now, it is settled law that the application under Order 7 Rule 11 of CPC can be filed at any stage of the suit. It is not necessary that the application is to be moved before framing of the issues. The point for determination in the present case is whether the suit as framed can be thrown out without trial or not. The answer is “No”, for, it is yet to be proved whether the transaction was genuine or not or whether the fraud had been played upon defendant No.2 or otherwise. Question of ostensible owner is also a matter of evidence.

The order rejecting the application does not suffer from illegality or infirmity or can be said to have been passed without jurisdiction. Petitioner shall be at liberty to raise the issue in this regard and lead evidence in support of the averments made in the plaint, but not in the manner and mode as noticed above.

For the reasons stated above, while upholding the order under challenge, revision petition is dismissed.

November 20, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No