

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7575 of 2015(O&M)
Date of Decision: 09.10.2018

Suresh Chand AmarPetitioner
Versus
Subhash Chand Amar and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.S. Chadha, Advocate with
Mr. S.K. Biriwal, Advocate
for the petitioner.

Mr. C.B. Goel, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 11.08.2016 passed by Civil Judge (Junior Division), Faridabad, whereby application filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint was dismissed.

[2]. At the time of issuance of notice of motion on 27.11.2015, following order was passed:-

“Learned counsel for the petitioner contends that parties are closely related being descendants of Sham Lal. Properties were partitioned amongst the stakeholders by virtue of three partition instruments.

Firstly it was done by way of registered partition dated 12.11.1959 and lastly by way of arbitral award dated 03.09.1977 which was ultimately made as a Rule of Court as well. After moving application under Order 7 Rule 11 CPC by the petitioner, an application for admission and denial of documents was also moved asking the defendants specifically to make statement in the context of certified copies of documents attached with the application. Learned counsel relies upon Vikas Aggarwal Vs. Anubha AIR 2002 Supreme Court 1796 to contend that powers in terms of Order 7 Rule 11 CPC could have been exercised in a given situation.

Notice of motion for 03.02.2016.

Dasti as well.

Trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

[3]. Perusal of the record would show that an application under Order 10 Rules 1 and 2 read with Section 151 CPC was filed by the petitioner on 18.07.2014 (Annexure P-12) with this petition. Para No.2 of the application reads as under:-

“2. That on the Court file, certified copies of certain judgments and decrees and other proceedings have been filed which documents are unimpeachable in nature. It is submitted that the plaintiff himself was a

party in respect of partition of properties which had taken place by appointing Sh. Om Parkash Singla, Uncle (Phupha) of the parties way back on 14.09.1977 in which the claim for arbitration proceedings was admitted by the present plaintiff and further the parties partitioned the properties by accepting the award of the Arbitrator and the said award was made a Rule of the Court on 04.11.1977. By virtue of the said award, the property situated at Link Road, Old Faridabad came to the exclusive share of Smt. Gindori Devi. It is further submitted that there was a civil suit titled as Suresh Chand Amar and others Vs. Sh. Harish Chand and others in which the present plaintiff was also a party and it was a suit for partition filed on 06.12.1972 and ultimately a compromise was arrived at between the parties on 19.07.1974 in which the present plaintiff was also a party and signatory. The said suit ultimately culminated into a decree dated 19.07.1974. Certified copies of all these documents and other documents which are Court proceedings are unimpeachable and are on the Court file.”

[4]. While passing the impugned order, contention of the petitioner along with other applicants/defendants was noticed in para No.4 of the impugned order and ultimately, the Court decided that firstly, parties shall be called to admit the documents in terms of **Vikas Aggarwal's case (supra)** i.e. for getting the pleadings clear after removal of ambiguity before the parties are sent to trial. Before framing of issues, material facts

and particulars are to be brought on record. In view of above, the trial Court preferred to decide the application under Order 7 Rule 11 read with Section 151 CPC prior to decision of the application under Order 10 CPC.

[5]. Order 7 Rule 1 CPC (J) (inserted vide amendment of Punjab, Haryana and Chandigarh dated 15.03.1991), prescribes that the plaint shall contain a statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results.

[6]. In terms of Order 7 Rule 11 CPC, the Court has to scrutinize the averments in the plaint. Pleadings in the written statement are wholly irrelevant. At this stage, if the allegations are vexatious and do not disclose a clear right to sue, the Court while exercising the power under Order 7 Rule 11 CPC can reject the plaint. If clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the parties under Order 10 CPC. The principle was highlighted in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust, (2012) 8 SCC 706.**

[7]. Order 7 Rule 14 CPC deals with production of documents

on which plaintiff sues or relies. When the plaintiff sues upon a document in his possession, he shall enter such document in the list, and shall produce the same in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaintiff. When the document is not in possession of the plaintiff, he shall state in whose possession the document is.

[8]. Order 10 CPC prescribes for ascertaining whether allegations in the pleadings are admitted or denied. At the time of first hearing of the suit, the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party. The Court shall record such admission and denial. The first hearing of the suit comes after framing of issues whereafter the suit is posted for trial.

[9]. At this stage, it can be appreciated that the application filed by the petitioner under Order 10 CPC was not decided vide the impugned order on the ground that the trial Court preferred to decide the application under Order 7 Rule 11 CPC prior in point of time.

[10]. After hearing learned counsel for the parties, I am of the view that on the alleged plea of clever drafting of the plaint, the trial Court would be obligated to take recourse to Order 10

CPC at the first instance in view of ratio laid down in **Church of Christ Charitable Trust & Educational Charitable Society case (supra)** and pass appropriate order in accordance with law. After the decision of the application under Order 10 CPC, if something survives for invoking the provision in terms of Order 7 Rule 11 CPC, the defendant would be entitled to take recourse to lawful criteria.

[11]. At this stage, without interfering in the impugned order, on legal parameters, it would be desirable to obligate the trial Court to decide the pending application under Order 10 CPC and thereafter, allow the parties to avail their legal remedies in accordance with law.

[12]. With these observations, this revision petition is disposed of.

October 09, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No