IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2301 of 2017(O&M)
Date of Decision-21.05.2019

Satish Kumar Saini ... Petitioner

Versus

Jasbir Kaur and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Petitioner Satish Kumar Saini in person.

Respondent No.1 in person.

Mr. O.P. Narang, Advocate
for respondent No.2.

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__RAJ MOHAN SINGH, J.__

[1]. Petitioner has assailed the order dated 11.11.2016 passed by Civil Judge (Senior Division), Chandigarh vide which application filed by defendant No.2/petitioner under Order 7 Rule 11 CPC was dismissed.

[2]. Plaintiff filed a suit for declaration to the effect that she is owner to the extent of 63.70% share and defendant No.2 is owner to the extent of 36.30% share in the six properties as described in the headnote of the plaint. Mandatory injunction was also sought, directing defendant No.1 to handover the possession of the aforesaid share in the properties to the plaintiff and handover the possession of aforesaid share of defendant No.2 and to issue and register the sale certificate in favour of the plaintiff and defendant No.2 to the extent of their shares. Plaintiff sought partition of the aforesaid properties to

the extent of their shares. Plaintiff also sought permanent injunction, restraining the defendants from further alienating the suit property in any manner.

[3]. Defendant No.1 is LIC Housing Finance Limited. It acquired the rights of ownership and possession of the suit properties under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 and rules framed thereunder.

[4]. Plaintiff has given the description of all the six plots in sub para No.2 of the plaint. Defendant No.1 issued an advertisement in the newspaper on 19.06.2007 for sale of immoveable properties as detailed in the headnote of the plaint which were taken into possession by defendant No.1 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002. Plaintiff pleaded that on 15.03.2008, plaintiff and defendant No.2 submitted a joint consent to purchase the properties in the shape of six residential plots as shown in headnote of the plaint. All the six plots were previously mortgaged with defendant No.1 by previous borrowers of defendant No.1. Joint consent letter dated 15.03.2008 has been attached with the suit properties as Annexure P2. Plaintiff pleaded in para No.5 of the plaint that on receipt of consent letter, defendant No.1 issued a joint letter to the plaintiff and defendant No.2 asking for certain

documents so as to finalize the further course of action. Letter dated 18.03.2011 has also been attached as Annexure P3 along with the plaint. Plaintiff further pleaded that the deal was finalized with defendant No.1 and a demand draft of Rs.8 lacs was deposited with defendant No.1. Details of demand draft viz-a-viz date and bank have been pleaded in para No.7 of the plaint and statement of account of the plaintiff has been attached as Annexure P6 with the plaint. Plaintiff also pleaded the details of payments made by defendant No.2 in para No.8 of the plaint. The amount of Rs.8 lacs deposited by the plaintiff with defendant No.1 was adjusted against the loan account No.14007436 of Bishambar Dass amounting to Rs.2,77,472/-, loan account No.14007708 of Ramesh Chander amounting to Rs.2,45,818/-, loan account No.14007709 of Pal Ram Gill amounting to Rs.2,45,818/- and loan account No.14007675 of Harish Chander amounting to Rs.30,892/-. The loan amount given by defendant No.1 has also been attached with the suit as Annexure P7. Defendant No.1 prepared six sale certificates in joint names of plaintiff and defendant No.2 in respect of aforesaid six plots and the same have been attached with the suit as Annexures P8 to P13. NOC was issued by defendant No.1 in joint names of the plaintiff and defendant No.2 acknowledging that plaintiff and defendant No.2 have paid full and final payment against purchase of six residential plots situated in Derabassi. No due certificate has also been attached with the suit as Annexure P14.

[5]. Plaintiff further in para No.12 of the plaint pleaded that on 10.03.2011, she came to know from reliable sources that defendant No.2 has agreed to sell the aforesaid properties to some willing buyer by projecting himself to be the sole owner of the properties. The agreement to sell was executed with Mrs. Ram Piari on the basis of some forged and fabricated no due certificate projected by defendant No.1. Thereafter, litigation started between the parties. Plaintiff pleaded cause of action to file the suit firstly on 10.03.2011 when she came to know from reliable sources that defendant No.2 has executed an agreement to sell in respect of suit properties with Mrs. Ram Piari. Cause of action again arose in the first week of April, 2013 when the plaintiff approached defendant No.1 and requested for issuance of registration certificate to the extent of her share i.e. 63.70%.

[6]. The suit was filed on 02.07.2013. Plaintiff has challenged the certificate dated 31.03.2009 and agreement to sell dated 15.04.2008 to be forged and fabricated and necessary pleadings have been made in para No.13 of the suit. FSL report on certificate dated 31.03.2009 is in negative. Defendant No.2/petitioner filed a consumer complaint in the District Consumer Disputes Redressal Forum-I, U.T.,

Chandigarh and the same was allowed vide order dated 02.02.2012 and defendant No.1 was directed to issue sale certificates in favour of the complainant alone in respect of properties mentioned before Forum and to further register the same in the office of Sub Registrar, Derabassi. Direction was also issued to pay Rs.20,000/- as compensation to the complainant for causing mental agony and physical harassment apart from Rs.10,000/- as litigation cost.

[7]. Defendant No.1 LIC Housing Finance Limited went in appeal before the State Consumer Disputes Redressal Commission, U.T., Chandigarh and the same was allowed on 11.09.2012. The order of the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh was set aside. Plaintiff also filed appeal before the State Consumer Disputes Redressal Commission, U.T., Chandigarh along with appeal filed by defendant No.1 LIC Housing Finance Limited.

[8]. The order dated 11.09.2012 passed by State Consumer Disputes Redressal Commission, U.T., Chandigarh was unsuccessfully challenged before the National Consumer Disputes Redressal Commission, New Delhi as the same was dismissed on 25.09.2014. The maintainability of the complaint as consumer by defendant No.1 was negated by State Consumer Disputes Redressal Commission, U.T., Chandigarh and National Consumer Disputes Redressal Commission, New

Delhi. Petitioner remained unsuccessful even in SLP(C) No.441/2015 which was dismissed by the Hon'ble Supreme Court vide order dated 27.01.2015. Liberty was granted to the petitioner to take steps as permissible to him in common law.

[9]. Petitioner has also filed a suit for declaration in the Court at Derabassi, wherein the plaintiff has not been impleaded as party defendant. Plaintiff has filed the present suit in the Court at Chandigarh with the aforesaid pleadings. The properties are situated at Derabassi. Office of LIC Housing Finance Limited is situated in SCO No.2445-46, Sector 22-C, Chandigarh. Even the complaint filed by the plaintiff in Derabassi at one point of time was got transferred by the plaintiff to Chandigarh. The transactions took place in Chandigarh and sale certificate was also issued at Chandigarh.

[10]. Petitioner has filed application under Order 7 Rule 11 CPC firstly on the issue of jurisdiction, secondly on the issue of non-filing of reply to the application under Order 7 Rule 11 CPC, thirdly on the issue of cause of action, fourthly, on the point of limitation and fifthly on the ground of litigation at the instance of the petitioner being pending at Derabassi.

[11]. It is a settled principle of law that at the stage of consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The plaintiff has pleaded various documents to show joint purchase of the

properties by the plaintiff and defendant No.2. Even the action taken by the petitioner is claimed to be rested on forged and fabricated documents. The issue of jurisdiction is a mixed question of law and fact. In view of pleadings made by the plaintiff, the averments would give rise to triable issues.

[12]. The case law relied by the petitioner i.e. ***Harshad Chiman Lal Modi Vs. DLF Universal and another, (2005) 7 SCC 791, Chief Engineer, Hydel Project and others Vs. Ravinder Nath and others, (2008) 2 SCC 350, CR No.7800 of 2010*** titled ***Piyush Colonisers Limited Vs. Narender Aggarwal and another*** decided on 29.02.2012, ***T. Arivandandam Vs. T. V. Satyapal and another, 1977 AIR 2421, I.T.C. Limited Vs. The Debts Recovery Appellate Tribunal and others,1998(2) SCC 70*** and ***N.V. Srinivasa Murthy and others Vs. Mariyamma (dead) by proposed LRs and others, 2005 AIR 2897*** are not attracted to the facts of the present case. Petitioner himself was relegated by the Hon'ble Supreme Court to take recourse to civil proceedings. Petitioner has filed a civil suit for declaration at Derabassi, but he has not impleaded the plaintiff as party defendant in the suit. Plaintiff has filed the present suit in Chandigarh on the premise that office of defendant No.1 is situated in Chandigarh. The transactions were held in Chandigarh and even sale certificate was issued at Chandigarh.

[13]. Since filing of the suit till date, written statement has not been filed by the defendant No.2/petitioner and his defence has already been struck off on 09.02.2017 against which review application is statedly pending. Evidently, both the parties are involved in numerous litigations.

[14]. In view of pleadings made in the plaint, issue of jurisdiction, cause of action and limitation can only be decided after framing of necessary issues and leading of evidence by the parties. Even the limitation and cause of action pleaded in the suit cannot be commented upon in the manner as suggested by the petitioner at this stage. In any case, the aforesaid pleas raked up by the petitioner can only be answered by the Court at an appropriate stage after framing of issues and leading of evidence by the parties. If the pleadings made by the plaintiff have created an illusion in respect of cause of action, the remedy available to the petitioner is to resort to Order 10 CPC in accordance with law. Provision in terms of Order 7 Rule 11 CPC is drastic and should be exercised with due care and caution. The triable issues cannot be ignored while considering the plea under Order 7 Rule 11 CPC.

[15]. In view of above, no indulgence can be granted in favour of the petitioner in this revision petition. This revision

petition is found to be totally devoid of merits and is accordingly dismissed.

[16]. Nothing observed hereinabove would be taken to be a final expression on merits of the case. Trial Court would proceed with the suit on merits in accordance with law.

21.05.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No
Whether reportable Yes/No