

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

Civil Revision No. 6322 of 2015

DATE OF DECISION : October 30 , 2019

Avdesh Pandey

..... PETITIONER(S)

VERSUS

Krishan Kumar and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Kunal Dawar, Advocate, for the petitioner.
 Mr. Vivek K. Sharma, Advocate, for
 Mr. Ashwani Gaur, Advocate, for the respondents.

...

Sanjay Kumar, J.

The petitioner in this revision, filed under Article 227 of the Constitution, is the defendant in Suit No.115 dated 11.09.2014 on the file of the learned Civil Judge (Junior Division), Gurgaon. The said suit was filed by the respondents herein for a declaration that the partition order dated 06.09.2013 passed by the Assistant Collector (Ist Grade), Gurgaon, and the mutation effected pursuant thereto, were illegal, null, void *ab initio* and not binding upon them. Further, they sought consequential relief by way of a permanent injunction restraining the petitioner from interfering with their peaceful possession over the suit land and from taking forcible

possession thereof.

While so, the petitioner filed an application in the suit under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that the suit was barred by law. However, by order dated 13.08.2015, the learned Civil Judge (Junior Division), Gurgaon, dismissed the application. Aggrieved thereby, the petitioner is before this Court.

Heard Shri Kunal Dawar, learned counsel for the petitioner/defendant, and Shri Vivek K. Sharma, learned counsel representing Shri Ashwani Gaur, learned counsel for the respondents/plaintiffs.

Shri Kunal Dawar, learned counsel, would contend that Section 158(2)(xvii) of the Punjab Land Revenue Act, 1887 (as applicable in the State of Haryana) (hereinafter, referred to as 'the Act of 1887'), bars the jurisdiction of the Civil Court and therefore, the suit plaint was liable to be rejected under Order 7 Rule 11(d) CPC. Learned counsel would further contend that the trial Court ought to have taken note of Section 41 (h) of the Specific Relief Act, 1963 (hereinafter, referred to as 'the Act of 1963'). He would place reliance upon case law in support of his contentions.

Per contra, Shri Vivek K. Sharma, learned counsel, would argue that, as the plaintiffs alleged that the partition order dated 06.09.2013 was a nullity, the jurisdiction of the Civil Court was not barred and the trial Court was fully justified in rejecting the application under Order 7 Rule 11 CPC.

Parties shall hereinafter be referred to as arrayed in the suit.

It is an admitted fact that aggrieved by the partition order dated 06.09.2013 passed by the Assistant Collector (Ist Grade), Gurgaon, the plaintiffs filed an appeal before the Collector/Sub-Divisional Magistrate, Gurgaon, and the same was dismissed on 04.08.2014. Surprisingly, this aspect of the matter did not find mention in the suit plaint. Further, without invoking the statutory revisionary remedy available to them under the Act of 1887 against the aforesaid appellate order dated 04.08.2014, the plaintiffs approached the Civil Court against the primary order, viz., the partition order dated 06.09.2013, which had already merged in the appellate order dated 04.08.2014.

Perusal of the order under revision reflects that the trial Court accepted the assertion of the defendant that Section 158(2)(xvii) of the Act of 1887 would have application and that the challenge to the partition order dated 06.09.2013 would not lie before it. However, the trial Court opined that as the plaintiffs had not only challenged the said partition order but also sought the relief of injunction, restraining the defendant from interfering with their possession, its jurisdiction would not be barred. It is on this basis that the trial Court held against the defendant and dismissed his application for rejection of the suit plaint.

At this stage, it may be noted that the relief of injunction was not sought by the plaintiffs as an independent relief but as a consequential one. Such injunctive relief was sought as a consequence to the primary relief of the declaration that the plaintiffs had asked for in relation to the partition order dated 06.09.2013. When the plaintiffs themselves claimed and understood this relief in that perspective, the trial Court ought not to

have separated these two reliefs and treated them as independent of each other.

That apart, in any event, without the correctness and validity of the partition order being subjected to critical examination, the trial Court could not grant the consequential relief of injunction, as sought by the plaintiffs. Section 158(2)(xvii) of the Act of 1887 specifically mandates that a Civil Court should not exercise jurisdiction over any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any property of which partition is sought [*see Raj Kumar V/s Katu Ram (1995(1) PLR 514) and Harjinder Singh V/s Kesar Singh and others (2014(2) PLR 18)*]. Admittedly, no question of title was raised by the plaintiffs in relation to the properties covered by the partition order dated 06.09.2013. Therefore, when the trial Court accepted that it was not within its purview to examine the validity of the said partition order and that the plaintiffs ought to have filed a revision under Section 16 of the Act of 1887, it could not have separately dealt with their consequential prayer for an injunction.

Further, the trial Court completely lost sight of the provisions of Section 41(h) of the Act of 1963, while separating the relief of injunction from the main declaratory relief sought by the plaintiffs. Section 41(h) of the Act of 1963 makes it clear that injunctive relief cannot be granted by the Court when an equally efficacious relief is obtainable in any other usual mode or proceedings [*see The Municipal Corporation of Delhi V/s Suresh Chandra Jaipuria and another (AIR*

1976 SC 2621 = (1976) 4 SCC 719]. When the trial Court itself recognized that the efficacious remedy of a statutory revision was available to the plaintiffs against the appellate order dated 04.08.2014 and that its jurisdiction was barred by law, it ought to have applied the provisions of Section 41(h) of the Act of 1963 and relegated the plaintiffs to the statutory remedy, even for the purpose of seeking injunctive relief.

The case law cited by Shri Vivek K. Sharma, learned counsel, does not further his case. In **Ram Swarup and others V/s Shikar Chand and another (AIR 1966 SC 893)**, the Supreme Court held to the effect that jurisdiction of the Civil Court would not be barred where the order impugned before it is a nullity. However, except for baldly claiming that the partition order should be declared null and void *ab initio*, the plaintiffs did not even elaborate on how they chose to categorize it to be so. There is no material whatsoever to support the claim of the plaintiffs that the partition order dated 06.09.2013 is a nullity. No grounds were cited in this regard either in the suit plaint or even before this Court. Reliance placed upon **Raghubir Singh V/s Jagpal Singh [2015(2) PLR 713]** is also of no avail as that was a case pertaining to fraud and this Court held that jurisdiction of the Civil Court would not be barred in such circumstances. Significantly, no allegation of fraud was made in the case on hand, whereby the *ratio* laid down in the aforestated decision can have application.

More significantly, the plaintiffs disentitled themselves from seeking the discretionary relief of an injunction from the trial Court by willfully suppressing the fact that they had suffered an order dismissing

their appeal against the very same partition order dated 06.09.2013 which was sought to be impugned in the suit. Trite to state, a litigant necessarily has to approach the Court with clean hands and selective disclosure of material facts does not conform to the required standard in this regard. Further, as already stated *supra*, the said partition order stood confirmed in appeal and was no longer amenable to an independent challenge as it stood merged in the appellate order. There was thus no cause of action for filing of the suit against the said partition order. Thus, on counts more than one, the defendant was entitled to succeed upon the application filed by him for rejection of the plaint. The order passed by the trial Court holding to the contrary and dismissing the said application is therefore unsustainable on facts and in law.

The civil revision is accordingly allowed, setting aside the order dated 13.08.2015 passed by the learned Civil Judge (Junior Division), Gurgaon, presently under revision. In consequence, the application filed by the defendant under Order 7 Rule 11 CPC shall stand allowed and the plaint in Suit No.115 dated 11.09.2014 shall stand rejected. No order as to costs.

October 30, 2019
Kang

(Sanjay Kumar)
Judge

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