

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

CR No.7737 of 2018 (O&M)

Date of Decision: 31.01.2019

Pushplata Sood

..... Petitioner

Versus

Mandir Shiv Shanker Bhole Nath and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Kamal Kumar Gaind, Advocate with
Ms. Vatika Gaind, Advocate
for the petitioner.

SUDIP AHLUWALIA J. (ORAL)

1. This revision is directed against the impugned order dated 10.10.2018 passed by the Ld. Additional Civil Judge (Senior Division), Khanna in CS No.3868 of 2013 dated 15.05.2013.

2. Vide the impugned order, an application under Order 7 Rule 11 of the Code of Civil Procedure (for short 'CPC') filed by the petitioner-defendant No.2 in the suit seeking rejection of the plaint on the grounds mentioned therein, was dismissed by the Ld. Court below.

3. After perusing the said application (Annexure P-2) and the order passed by the Ld. Court below sought to be impugned, and on hearing the submissions on behalf of the petitioner, this Court finds no reasons to interfere with the said order.

4. This is so because the Ld. counsel for the petitioner has failed to convince this Court as to how the plaint of the respondents *“completely lacked of necessary material pleadings and particulars for claiming a declaration of title over the suit property (which happens to be a temple*

with some land attached) and permanent injunction”, as mentioned in Para No.1 of the Application (Annexure P-2).

5. Suffice it to say, the plaintiffs had clearly averred that the land in question was gifted by the petitioner herself in favour of plaintiff No.1 which happens to be a Temple by the name of “Mandir Shiv Shanker Bhole Nath, Krishna Nagar” through its three Administrators including the plaintiff No.2 by virtue of a registered Deed of Gift dated 08.08.2002, after which possession was taken over by the said donees. The remaining two administrators namely, Sh. Sham Lal Ghai and Swami Sarva Nand Giri Chela Swami Sachida Nand are stated to have died in the meantime, on account of which plaintiff No.2 on behalf of the Temple (plaintiff No.1) had sought for the declaration of title and permanent injunction in view of the allegations disclosed in the plaint to the effect that the petitioner-defendant No.2 later on was attempting to resile from the Gift Deed executed by her and to illegally take possession of the disputed property.

6. It is further seen that in para No.11 of the plaint (Annexure P-3), the plaintiffs-respondents explained their cause of action cogently which was alleged to have accrued only about a week before filing of the suit.

7. The petitioner has failed to point out the specific provision of law under which the suit in its present form, purely as claimed by the plaintiffs, would be barred. The plaintiffs had admittedly sought for declaration of ownership of plaintiff No.1 of the disputed property through plaintiff No.2 (Administrator), apart from permanent injunction to restrain the petitioner-defendant and others claiming through her from interfering in

the control and management of the temple, and for recovery of possession of one room shown as R-1 in the site plan, which was not vacated by defendants No.19 and 20, who were alleged to have been initially permitted to occupy the same in view of the fact that they were at the relevant time priests of the Temple, and who are subsequently alleged to have colluded with the petitioner-defendant No.2.

8. For the aforesaid reasons, this Court is in agreement with the observations of the Ld. Court below that there is no merit in the application filed under Order 7 Rule 11 of the CPC filed on behalf of the petitioner, which was incidently filed even after the evidence from the plaintiff's side in the suit had been completed, and there was no reason to hold that the plaint disclosed no cause of action, or lack of material particulars, or that it was barred by any law or that the relief(s) claimed in the same were contradictory. It may be further observed that once the issues had been framed in the suit before commencement of the trial, even by virtue of Order XIV Rule 2 of the CPC, the Ld. Court below would be required to pronounce its findings on all the issues framed, and in the given circumstances, it was not the appropriate stage to reject the plaint on an application filed subsequently even if assuming there was any merit in the application under Order 7 Rule 11.

9. Consequently, the present petition stands dismissed.

January 31, 2019

rittu

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No