

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

Civil Revision No.2492 of 2020

Reserved on : 10.11.2020

Pronounced on : 27.11.2020

Adarsh Nataya Sansatha through its President

... Petitioner

Versus

Ashok Mehta and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Kumar Jindal, Advocate for the petitioner.

Mr. R.P. Dangi, Advocate for respondent No.2.

G.S. Sandhawalia, J.

The petitioner-defendant No.3, in the present revision petition filed under Article 227 of the Constitution of India seeks setting aside of the order dated 16.10.2020 (Annexure P-4) passed by the learned Additional Civil Judge (Senior Division), Meham, whereby the application filed under Order 7 Rule 11 CPC has been dismissed.

The reasons given in the impugned order are well justified as such, as the Trial Court has come to the rightful conclusion while dealing with an application under the said provisions that only the plaint has to be taken into consideration by the Court. The whole of it should be read in a meaningful way and alongwith the documents filed with the plaint to be looked into. The challenge being to the assessment entry under the Haryana Municipal Act, 1973 (for short '1973 Act') was one of the challenges raised, apart from the conveyance deed, which had been given by the defendant No.3 in favour of defendant No.1 and whether it was to

be declared null and void. Similarly the date of the knowledge of the disputed entry and the conveyance deed had not been pleaded and, therefore, it was a matter of evidence whether the suit was within limitation. Thus it was held that the plaint could not be partly rejected, but only as a whole and the reliefs could not be separated and the application was not liable to be allowed.

Senior counsel for the petitioner has vehemently submitted that the possession of the property had been handed over to the Municipal Committee, Meham for the purpose of construction of the Atal Samudayik Kendra and the defendant No.1 was in possession of the suit property. The plaintiffs and defendant No.2 & 4 had no concern with the same and the same was for the public purpose at large. Once assessment had been made in the register, the challenge to the same was barred under the provisions of the 1973 Act, in view of Clause (d) of Order 7 Rule 11 CPC. Reliance was placed upon Section 101 and 156 of the 1973 Act, which read as under:-

“101. Taxation not to be questioned except under this Act. -

(1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules.

156. Jurisdiction of Civil Courts barred. - Notwithstanding anything contained in any other law for the time being in force, no civil court shall have jurisdiction to entertain or adjudicate

in any suit, application or other proceedings relating to the right or interest to, or in the compensation referred to in Section 154 or Section 155 or the amount or apportionment or the payment thereof or any matter connected therewith.

Accordingly, it was argued that the plaintiffs had an alternative efficacious remedy of appeal under Section 99 of the 1973 Act and further appeal was provided before the State Government. The appeal had to be filed within one month from the date of publication of the notice as per Section 11 and the plaintiffs were aggrieved by the assessment made in the year 2012-2013. The suit had been filed in the year 2020 after 8 years. Reliance was placed upon Section 41 (h) of the Specific Relief Act, 1963 that an injunction could not be granted as such and preliminary objection had been taken by the Municipal Committee that the suit of the plaintiffs was not maintainable.

Counsel for the respondent-plaintiffs on the other hand has submitted that question of limitation was a mixed question of law and fact and dispute was regarding transfer of property and, therefore, it could not be said that the provisions of 1973 Act would provide an efficacious remedy. The suit was filed under Section 91 of CPC for declaration alongwith consequential relief for permanent injunction and mandatory injunction. The provisions of Order 7 Rule 11 (d) CPC only provided where the suit appears from the statement in the plaint to be barred by any law, the plaint shall be liable to be rejected.

In the case of '**Rajesh Grover Vs. Smt. Rita Khurana**', **2006 (2) PLR 244**, it was held that the rejection of plaint was a very

serious consequence and the Court should be circumspect in rejecting a plaint at threshold while dealing with an application, whereby rejection of plaint has been prayed for. The issue as such was that there was no fresh cause of action, since an earlier suit had been got dismissed as withdrawn. Resultantly, the Trial Court had come to the conclusion that there was no such pleadings in the plaint and nor any issue had been framed and the plea of the suit having been barred by limitation, would be decided at the appropriate stage. Thus, the said order was upheld.

The Apex Court in the case of '**P.V. Guru Raj Reddy represented by GPA Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others**', 2015 (8) SCC 331, has held that the averments in the plaint should be read in a whole to find out whether the suit is barred under any law. The stand of the defendant in the written statement or the application for rejection of plaint was wholly immaterial. Resultantly, the application under Order 7 Rule 11 CPC, which had been allowed by the High Court of Andhra Pradesh was set aside at the instance of plaintiffs. It was also held that it is a drastic power conferred in the Court and the conditions precedent to the exercise of power under Order 7 Rule 11 CPC, therefore, are stringent as such and only the plaint is to be taken into consideration. The relevant paras read as under:-

“5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or

whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

Similarly, a three Judge Bench of the Apex Court in **'Chhotanben and another Vs. Kiritbhai Jalrushnabhai Thakkar and others' 2018 (6) SCC 422**, has held that if a triable issue arises, the plaint is not liable to be rejected and thus allowed the appeal setting aside the order of the High Court which had allowed the application under Order 7 Rule 11 CPC. Keeping in view the above principles the plaint has thus to be examined.

The suit was filed by the respondents-plaintiffs that there was a Geeta Bhawan Mandir in Ward No.10, Meham (New Ward No.11) which was being looked after by respondent No.4-Punjabi Dharamsala and Geeta Bhawan Mandir Parbandak Samiti, Meham through its Officiating President. In front of the Mandir there existed a statue of

Lord Shiva, Shivalya, Hall for meeting and other indoor functions. The shop was over the ground floor and a staircase and the room on the first floor and in the background there existed a stage for performance of Ramleela and open courtyard for performing Hawan, Bhandaras and other religious functions. The Municipal Committee had earmarked two different numbers to the property i.e. front portion and back portion as property No.5300 and 5300/1 in the assessment register for the assessment year 1993-1994, 1999-2000 and 2001-2002 as Geeta Bhawan Mandir. Property No.5300/1 had been shown as Geeta Bhawan Panchayati, and both the numbers were looked after by defendant No.4. The back portion was used by residents of village Meham for religious purpose like Ramleelas etc. from the year 1987 onwards and permission as such being taken. The residents of the village Meham were donating to the Mandir and had got constructed building and large statue of Lord Shiva. The people of the area were attached sentimentally with the Mandir and its properties.

A permanent Ramleela Munch had been constructed for performing Ramleelas by different Ramaleela Committees and defendant No.3 was one of them which used to perform Ramleela at the back portion of the Mandir. On visiting the Mandir, the plaintiffs found the Ramleela stage in a dilapidated condition and financial help was offered to the Geeta Bhawan Mandir, when it came to the knowledge that the defendant No.3 in connivance with defendant No.1 had got entered its name in the assessment register illegally for the area where the

Ramleelas, Bhandaras and other religious functions were performed. The defendant No.3 had released the land in favour of defendant No.1 illegally, as the defendant No.3 had no right, title and interest in the land. The assessment record for the year 2012-2013 also showed that back portion of the Mandir had been shown under the head of the building use, as religious and the head of the category was shown as Mandir. Sale deeds of different people surrounding the back portion of the Geeta Bhawan Mandir mentioned the Geeta Bhawan Mandir and not that of the defendant No.3.

Reference was made to grant given by the Chief Minister, Haryana of Rs.10 lakhs for construction of Punjabi Dharamsala at Geeta Bhawan. The permission given by the District Collector, Rohtak would also show that the Punjabi Dharamsala was constructed on the same place which is now the suit property and in the said letter it was itself written as Geeta Bhawan. A resolution had also been passed by the defendant No.3, Municipal Committee on 30.08.2011 showing the place of construction for Punjabi Dharamsala in the west of the Geeta Bhawan Mandir. It was further averred that defendant No.1 and 3 has alleged that defendant No.3 had released the suit land in favour of the defendant No.1-Municipal Committee, which was also challenged. The cause of action was thus on the basis that tenders had been invited for raising construction of Atal Sewa Kendra where said religious functions were held and the competency to change the land without title which was valued in crores was objected to. It was also averred that the defendant No.4 the

authorized person had failed to protect the interest of defendant No.2. Thus, it was averred that the religious sentiments of public at large were affected by changing the nature of the property and the correction in the assessment register was also sought. The cause of action had arisen a week back when a wall of the suit property had tried to be broken, but due to intervention of the local people, they could not succeed.

The written statement filed by defendant No.1/M.C. was filed that it was constructing Atal Samudayik Kendra and the plaintiffs have filed the suit in collusion with the defendant No.2 & 4 to create hindrance in the public welfare work. It was submitted that there were two different properties and the plaintiffs and defendant No.2 had no concern with the property. Another suit was also pending titled as **'Punjabi Dharamsala Vs. Municipal Committee, Meham'**, which had been filed by defendant No.2 & 4 through Dharampal Mehta, who was the brother (son of real uncle of the plaintiffs). The stay application had been dismissed on 18.09.2019 and, therefore the suit filed by the plaintiffs was misuse of the process of law.

The plea was taken that the stage for playing the Ramleela and Rasleela had been constructed by defendant No.3 and no other person had concern with the same. Plaintiffs, defendant No.2 & 4 were neither owner nor in possession of the suit property, which had been allotted ID No.45C141U16. It was owned and possessed by defendant No.3, who had handed over the same to defendant No.1 for construction of the Atal Samudayik Kendra and resultantly the suit was contested.

The application was filed by the defendant No.3 on 29.09.2020 taking the pleas as argued by the Senior Counsel bar of jurisdiction on account of the provisions in the 1973 Act and under Section 41 (h) of the Specific Relief Act, 1963.

The same was contested by the plaintiffs that the suit was regarding right to property and the dispute was of civil nature. The limitation started from the date of knowledge and the plaintiffs on coming to know after the calling of tenders by the Municipal Committee had filed the suit. The respondent/plaintiffs had no remedy available except the present suit and, therefore, the plea was taken for rejection of the plaint.

Thus, from the above pleadings and as per the law discussed above, if the plaint is to be taken as a whole, the challenge as such is to transfer of the property in favour of defendant No.1-Municipal Committee, who is trying to raise construction on the land in dispute, which was being used for religious purposes. The issue thus would be that whether the defendant No.3 has the right to transfer the land in favour of defendant No.1 and on what basis the assessment as such was made in the municipal records. The challenge is not to any notice or proceeding issued under the 1973 Act for fiscal purposes against which there is a bar as per the provisions of Section 156 and therefore, it cannot be said that there is a statutory bar to the jurisdiction of Civil Court.

The Civil Court was well justified in rejecting the plaint, keeping in view the fact that valuable interest of the general public as such was involved and as to how the property was being transferred and

was going to be put to use by the Municipal Committee. It is, thus, a matter of evidence and it is not a case where the suit is barred as such and plaint is not liable to be rejected, as has been contended by the senior counsel. The same does not fall within the parameters of Order 7 Rule 11 CPC and the law holding the field.

Resultantly, this Court is of the opinion that there is no illegality in the impugned order. Accordingly, the present revision petition stands dismissed in limine.

27.11.2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes