

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.819 of 2021 (O&M)
Date of Decision: 23.04.2021

Balraj Singh and others

....Petitioner(s)

Versus

Banwari Lal and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ajay Jain, Advocate, for the petitioners.

Through Video Conferencing

JASGURPREET SINGH PURI, J.

The present revision petition has been filed under Article 227 of the Constitution of India with a prayer for setting aside the order dated 19.03.2021 which has been passed by the learned Civil Judge (Junior Division), Hisar vide which an application filed by the petitioners/defendants under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure for rejection of the plaint has been dismissed.

A brief factual metric of the case would be necessary before considering the submissions made by the learned counsel for the petitioners. The respondent/plaintiff (Banwari Lal) filed a suit for declaration to the effect that plaintiff is sole and exclusive owner in possession with respect to the property given in the head note of the plaint which has been annexed with the present petition as Annexure P-1. It has been stated in the plaint that the

plaintiff had filed a suit for injunction against Balraj Singh and others because they had tried to forcibly take the possession and the Court had ordered to file a suit for the partition of the land in question because the land of the plaintiff and Balraj Singh and others fall under the same khasra numbers. After filing of the civil suit by the respondent No.1, an application was filed by the present petitioners who were defendants in the civil suit for rejection of plaint on the ground that plaintiff had earlier filed a Civil Suit No. 365-C dated 18.08.2008 titled as Banwari Lal Versus Balraj Singh and others seeking injunction restraining the defendants not to interfere in his alleged actual and physical possession over the land in question by claiming himself to be the sole owner in possession of the same and that in the said civil suit similar plea was taken that the suit land exclusively belongs to him but such plea was negated by the Civil Court vide judgment and decree dated 31.07.2014 by recording a finding that the plaintiff had failed to prove his exclusive possession over the land in question which along with the other land is a joint property of the parties and that the said judgment has attained finality. A reply to the aforesaid application was filed in which it was stated that the said application was utterly false, vague and frivolous and has been filed only to delay the proceeding of the case and that the question of the ownership of the property in question was not disputed in the earlier suit but it was only possession which was in dispute and, therefore, the present suit is not barred by any law. This application has been now decided by the learned Civil Judge (Junior Division), Hisar by passing the impugned order 19.03.2021 whereby the said application has been dismissed.

The learned Civil Judge (Junior Division), Hisar dismissed the application by considering the fact that the application under Order 7 Rule 11

CPC cannot be allowed on the ground that the present suit was barred by the principle of res-judicata because the earlier suit was a suit for injunction whereas the present suit is a suit for declaration and, therefore, the principle of res-judicata will not operate in present suit. Furthermore, in the earlier civil suit for injunction the learned Civil Court has nowhere given any finding to the effect that the plaintiff had no title over the property in dispute and rather gave a finding to the effect that the plaintiff and the defendants are co-owners in the property in dispute and, therefore, it will not preclude the plaintiff to seek specific declaration of ownership over the property in dispute. The learned Civil Court referred to the judgment of the Hon'ble Supreme Court in ***'P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Versus P.Neeradha Reddy and others' [2015(8) SCC 331]*** wherein it was observed that at the stage of exercise of power under Order 7 Rule 11 CPC, 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 that the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. The learned Civil Judge further observed that since the learned Civil Court did not dismiss the previous suit on the ground that plaintiff was not co-owner of the property in dispute but on the ground that he has failed to prove his exclusive possession over the suit land, the present suit is not barred by the law of res-judicata and moreover, the matter directly or substantially in issue in the previous suit and in the present suit can be determined only after perusal of pleadings of both the parties and in the present suit, the defendant is yet to file his written statement and, therefore, the present application seeking

the dismissal of the suit on the ground of res-judicata deserves dismissal on the ground of filing at immature stage.

Mr. Ajay Jain, learned counsel for the petitioners submitted that the impugned order is erroneous and deserves to be set aside on the ground that the second suit was not maintainable in view of the fact that in the earlier suit the question with regard to ownership was also considered. The learned counsel has relied upon para 21 of the earlier suit which was a suit for permanent injunction (Annexure P-4) in which it was observed that the plaintiff had failed to prove that the disputed land tallies with the property described in his sale deeds and he is in exclusive possession over the same and that the defendants also failed to prove that they have occupied the disputed property by any means of demarcation or by taking possession from their vendor namely Munish Kumar and that the entire land is a joint property and the parties are at liberty to settle on their respective shares after effecting a formal partition from the competent Court. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in '***Sulochana Amma Versus Narayanan Nair***' [1994(2) SCC 14] wherein it was held that in a suit for injunction where title is in issue for the purpose of granting injunction, the issue directly or substantially arises in that suit between the parties and when the same issue is put in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res-judicata.

The learned counsel has submitted that in the earlier suit the question of title was in issue for the purpose of grant of injunction and, therefore, the present suit was barred by res-judicata.

I have heard the learned counsel for the petitioners.

The law with regard to invoking of the provisions of Order 7 Rule 11 of Code of Civil Procedure is no longer res-judicata. In the present case the petitioners sought to invoke Clause (d) of Order 7 Rule 11 CPC which provides that a plaint can be rejected where a suit appears from the statement in the plaint to be barred by any law.

The Hon'ble Supreme Court in '*Kamala and others Versus K.T. Eshwara Sa and others*' [2008(12) SCC 661] while referring to the provisions of Order 7 Rule 11(d) of CPC observed that the same has a limited application. The question as to whether the suit is barred by any law or not, such a conclusion must be drawn from the averments made in the plaint and what would be relevant for involving clause (d) of Order 7 Rule 11 CPC are the averments made in the plaint and for that purpose there cannot be any addition or subtraction. Furthermore, the absence of jurisdiction on the part of the Court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 CPC is one, Order 14 Rule 2 is another. Furthermore, the question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing but the said question cannot be determined at that stage. It is one thing to say that the averments made in the plaint on their face discloses no cause of action but it is another thing to say that although the same discloses a cause of action, the same is barred by a law. Para No.15 and 16 of the aforesaid judgment are reproduced as under.

'15. Order 7, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7, Rule 11, in our opinion,

should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7, Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7, Rule 11 of the Code is one, Order 14, Rule 2 is another.

16. For the purpose of invoking Order 7, Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order under the said provision.

The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law'.

The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact of law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject matter thereof, the application for registration of plaint should be entertained'.

The Hon'ble Supreme Court in the case of ***P.V. Guru Raj Reddy's case (supra)*** observed that rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure is a drastic power conferred in the Court to terminate a civil action at the threshold and that the condition precedent to the exercise of power under Order 7 Rule 11 CPC are stringent and have been consistently held to be so by the Court. It is only if 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. Para 5 of the aforesaid judgment is reproduced as under:-

'5. Rejection of the plaint under Order 7, 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 7, 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 7, 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'.

In the present case, the earlier suit filed by the respondent Banwari Lal was a suit for permanent injunction as is clear from Annexure P-4 and P-5 which is the judgment and a copy of decree-sheet respectively. A

perusal of para 19 of the judgment shows that the learned Civil Court observed that after going through the testimony of the witnesses, it is clear that both the parties are putting their rival claims over the suit property. Therefore, ownership is not in dispute, but the fact of possession is in dispute and that all of them are the co-sharers. Reliance was placed by the learned counsel for the petitioners on para 21 of the judgment in which it was specifically observed that it is clear that the plaintiff failed to prove that the disputed land tallies with the property described in his sale deeds and he is in exclusive possession over the same and that the entire land is a joint property and the parties are at liberty to settle on their respective shares after effecting a formal partition from the competent Court. A perusal of the aforesaid observations made in para No.19 and 21 of the judgment would show that it was observed by the learned Civil Court that the ownership was not in dispute and no finding has been recorded with regard to the fact as to who was the owner of the property. It was a suit for injunction and the same was dismissed on the ground that specific possession could not be proved as the plaintiff has failed to prove that the disputed land tallies with the property described in his sale deeds or that the plaintiff is in exclusive possession over the same and, therefore, liberty was granted for settlement of respective shares after formal partition from the competent Court. Therefore, there was neither any finding with regard to ownership nor the same was disputed in the earlier suit. The present suit was however filed seeking a declaration to the effect that the plaintiff is sole and exclusive owner in possession of the suit land. Therefore, the question which would arise for consideration in the present case is whether the provisions of Order 7 Rule 11 CPC should have been invoked or not in view of the law laid down by the **Hon'ble Supreme Court in P.V.**

Guru Raj Reddy (supra) and *Kamala's case (supra)*. The provisions of Order 7 Rule 11(d) CPC have limited application and it is a drastic step to terminate a civil action at the threshold. When mixed question of fact and law arise as in the present case, then the plaint cannot be rejected at the threshold. The provisions of Order 7 Rule 11(d) CPC would apply when on the perusal of the plaint itself the Court is ex facie satisfied that the plaint can be rejected at the threshold without looking into the written statement or any other evidence. However, in the present case at the most it can be a mixed question of law and facts but certainly it cannot be said that the plaint can be rejected at the threshold.

In view of the above, I do not find any illegality or perversity in the impugned order passed by the learned Civil Judge (Junior Division), Hisar and, therefore, the present revision petition is hereby dismissed.

23.04.2021

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No