

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 1075 of 2021(O&M)

Date of Decision: October 11 , 2021.

Avtar Dass and another

..... PETITIONER (s)

Versus

Jeet Dass and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Dhivya Jerath, Advocate
for the petitioners.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

CM No.10471-CII of 2021

Annexures P3 and P4 i.e., application dated 07.09.2020 for return of the plaint and reply dated 10.11.2020, are taken on record subject to just exceptions. Exemption from filing certified copies thereof is granted.

Application is disposed of.

CR No.1075 of 2021

This revision petition has been filed seeking setting aside of order dated 17.02.2021 passed by the learned Civil Judge (Junior Division), Sangrur whereby petitioner's application under Order 7 Rule 10 CPC for return of the plaint filed by respondent No.1/plaintiff, has been dismissed.

Brief facts necessary for the adjudication of the matter are that,

respondent No.1/plaintiff filed a suit for declaration through his next friend,

Satgur Singh to the effect that the plaintiff is a mentally retarded person, unable to make decisions about his own welfare and having fallen prey in the hands of defendants, who not only had a fiduciary relationship with the plaintiff, but were also in a dominating possession qua the plaintiff, had manipulated sale-deed dated 10.08.2010 with regard to share of the plaintiff in the suit property as detailed therein. Will in favour of defendants No.5 and 6, arrayed as respondent No.4 and 5 in this petition, is also stated to have been illegally, managed keeping in view the mental condition of the plaintiff. It is stated that plaintiff-Jeet Dass and Hukam Dass are sons of Ishar Dass. Defendants are sons and grandsons of Hukam Dass. An application under Order 7 Rule 10 CPC was moved by the defendants No.1, 2 and 4 with the allegations that plaintiff is liable to be rejected and the same is not maintainable.

Learned trial court vide impugned order dated 17.02.2021 has dismissed the application while observing as under:-

“3. After hearing the arguments of both the parties, this Court is of the view that the present application has been filed for the return of the plaint. However, no ground for the return of the plaint as per Order 7 Rule 10 CPC has been mentioned by the defendants. Also, the grounds mentioned by the defendants for the return of the plaint do not fall under any of the categories mentioned under the said Order. The plaintiff in the instant case has been alleged to be a person of unsound mind. At this stage, the plaint cannot be returned on the basis of the averments mentioned by the defendants No.1, 2 and 4 in the application. Therefore, in view of the entire discussion, the present application is dismissed being devoid of merits. However, the decision of this application shall have no effect whatsoever on the final decision of the case, on merits.”

Aggrieved therefrom, defendants No.1 and 3 have filed the present revision petition.

Learned counsel for the petitioners submits that plaintiff, Jeet Dass is stated to be a perfectly sane person. It is submitted that an inquiry as envisaged under Order 32 Rule 15 CPC should have first been conducted before proceeding with the matter. Plaintiff, Jeet Dass is stated to be absolutely fit and dealing with his property personally and the suit was filed by concealing true facts. Intention of Jeet Dass, it is stated, is not clear and this suit has been filed with ulterior motives. It is thus prayed that impugned order be set aside.

Heard learned counsel for the petitioners and have gone through the file.

At this stage, it is useful to reproduce Order 7 Rule 10 CPC, which reads as under:-

“10. Return of plaint.— (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.-- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint.--On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

The learned trial court can return the plaint in the eventualities as provided in Order 7 Rule 11 CPC which is reproduced as under:-

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:— (a) where it does not disclose a cause of action;

- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.”

Petitioners/applicants have clearly failed to make out a case for rejection of the plaint, at this stage. It cannot be said by any stretch of imagination that no cause of action is disclosed in the plaint.

Learned counsel for the petitioners, at this stage, submits that the application under Order 7 Rule 10 CPC should be kept pending till decision of the learned trial court on the application under Order 32 Rule 15 CPC. I do not find merit in this argument. Learned counsel for the petitioners is unable to point out any ground which would justify return of the plaint in the present case. It is pertinent to note at this stage that application for assessment of mental condition of plaintiff, Jeet Dass is admittedly pending before the learned trial court. Therefore, concerns and apprehensions, if any, raised by the petitioners shall be adequately addressed by the learned trial court in the said proceedings.

No other argument has been raised.

There is no illegality, perversity or infirmity in the impugned order

dated 17.02.2021 passed by the learned Civil Judge (Junior Division), Sangrur

which call for any interference by this Court in exercise of revisional jurisdiction.

Revision petition is accordingly dismissed being devoid of merit.

(LISA GILL)
JUDGE

October 11 , 2021.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No