

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

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IN VIRTUAL COURT

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CR No. 1310 of 2021 (O & M)
Decided on: 15.7.2021

Nirmal Singh

.....Petitioner

Versus

Balwinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. K.K. Saini, Advocate, for the petitioner

Rajbir Sehrawat, J.(Oral)

This petition has been filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 31.3.2021 (Annexure P-5), passed by the Court of Additional Civil Judge (Senior Division), Fatehabad, whereby the application under Order 7 Rule 11 CPC, filed by the petitioner has been dismissed.

The brief facts of the case, as mentioned in the order passed by the Court below are; that the plaintiffs/respondents herein filed a suit for declaration claiming that the plaintiffs and the proforma defendants are the owners in possession to the extent of their shares in the land mentioned in the civil suit, on the basis of inheritance of Darshan Singh. In that suit, notice was served upon the petitioner, who were the defendants in the suit filed before the civil Court. The petitioner filed application under Order 7 Rule 11 CPC for rejection of the plaint. Later on the defendants also filed written statement. In the written statement, the defendants/petitioner herein, claimed their right to

inherit Darshan Singh and they claimed a Will of Darshan Singh in favour of Nirmal Singh, allegedly executed on 1.7.2011. Accordingly, it was asserted that the plaintiffs had no concern with the property as such. Now the application under Order 7 Rule 11 CPC has been dismissed by the Court below by observing that the issue raised by the defendants in the application is a matter relating to the merits of the case and cannot be decided at this stage. Against this order, the present petition has been preferred by the defendants in the suit.

While arguing the case, counsel for the petitioner has submitted that the property involved in the suit is a self acquired property of deceased Darshan Singh. He had validly executed the Will in favour of the defendants/petitioner. It is further submitted that even the sister of Darshan Singh has sworn an affidavit and filed written statement in the suit in favour of the petitioner. Therefore, the plaintiffs are not the legal heirs even on the face of it. Accordingly, their suit should have been dismissed because they had no locus standi to file the same.

Having heard counsel for the petitioner and having perused the file, this Court does not find any substance in the argument of counsel for the petitioner. For considering an application under Order 7 Rule 11 CPC only the averments as made in the plaint are to be considered to see if the same, taken as undisputed, disclose any cause of action or not. In the present case undisputedly, the suit pertains to the properties left behind by Darshan Singh. The plaintiffs/respondents, in their plaint; are claiming to be the natural legal heirs of deceased Darshan Singh. On the contrary, in the written statement, the petitioner/defendants are disputing the natural succession of Darshan Singh on

the basis of Will. Hence, it cannot be said, by any means, that the plaint filed by the plaintiffs does not disclose any cause of action. It is not even the case of the petitioner/defendants that suit is barred by any other provision of law.

So far as the argument of the counsel for the petitioner qua his reliance upon the Will executed by Darshan Singh is concerned, obviously; the same would be the subject matter of adjudication during the proceedings of the suit. Neither the claim of the plaintiffs qua inheritance can be rejected without granting them opportunity to adduce evidence nor can the Will in favour of the petitioner be made basis to assume an undisputed entitlement of the defendants to the property left behind by Darshan Singh; unless the same is substantiated before the trial Court, in accordance with law. Accordingly, the assertions made by the petitioner/defendants itself show that the present is not an aspect which could have been a ground for rejection of plaint in an application moved under Order 7 Rule 11 CPC. The trial Court has rightly rejected the application.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

15.7.2021
Ashwani

Speaking/Non-speaking : Yes/No
Reportable/Reasoned : Yes/No