

Civil Revision No.2551 of 2020(O&M)

Date of Decision: January 6 , 2021.

Om Parkash

..... PETITIONER

Versus

Amit Mishra and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILLPresent: Mr. Ram Kumar Saini, Advocate
for the petitioner.Dr. Deepak Jindal, Advocate
for respondents No.1 and 2

LISA GILL, J.

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

CM-10243-CII of 2020

For the reasons mentioned in the application, duly supported by an affidavit, as well as arguments addressed, Annexures P5 and P6 are taken on record subject to just exceptions. Exemption from filing the certified copies thereof is granted.

Application is disposed of.

CR No.2551 of 2020

This revision petition has been filed by the petitioner (defendant No.1 before the learned trial court) for setting aside order dated 09.10.2020 (Annexure P4) passed by the learned Civil Judge (Junior Division), Gurugram whereby petitioner's application under Order 7 Rule 11 CPC, has been dismissed.

Respondents No.1 and 2 filed a suit for specific performance with

consequential relief of permanent injunction with the averments that the present petitioner (defendant No.1) had claimed to be the allottee of land as described in the plaint, regarding which litigation was stated to be pending before the court of District Judge, Narnaul. He claimed to be the sole legal heir of Chanchali Bai wife of late Shri Tikam Dass. Defendant No.1 represented that due to old age, he was not able to manage the litigation. An agreement to sell dated 15.05.2017 (Annexure P5) was executed by the present petitioner in favour of the plaintiff/respondent No.1 for a consideration of Rs.50,00,000/-. A sum of Rs.5,00,000/- was received as earnest money. Subsequently, another agreement dated 09.07.2019 (Annexure P6) was executed between the present petitioner and the respondents in this revision petition. The consideration amount was increased to a sum of Rs.90,00,000/-. The petitioner received a total sum of Rs.29,00,000/-. It is pleaded that the present petitioner did not come forward to execute the sale-deed in favour of the plaintiffs. Therefore, suit for specific performance was filed.

Present petitioner filed an application under Order 7 Rule 11 CPC for rejection of the plaint while stating that the suit had been filed with an ulterior motive and that the petitioner, in fact, is not owner of the land in question. It is specifically pleaded by him that the agreement to sell was somehow executed with the plaintiffs as they exerted influence upon him. Furthermore, the plaintiffs/respondents had failed to carry out the terms and conditions of the agreements. Therefore, the plaint deserves to be rejected.

Learned trial court vide impugned order dated 09.10.2020 dismissed the petitioner's application. Aggrieved therefrom, the present revision petition has been filed.

Learned counsel for the petitioner vehemently argues that perusal of the plaint does not reveal cause of action, therefore, petitioner's application for rejection of plaint, has been wrongly dismissed by the learned trial court. It is

contended that once the petitioner was not even owner of the land in question, therefore, it cannot be said that any cause of action arises to the plaintiffs to file the suit for specific performance. It is argued that the sale-deed, as per the agreements, could be executed only when the property in fact stood allotted to Chanchali Bai and then transferred in the name of present petitioner. There is nothing on record to show that the petitioner is, in fact, the owner of the land. Thus cause of action to file the suit for specific performance, it is submitted, did not arise as allotment was never made to Chanchali Bai/petitioner. Moreover, as per the agreement in question, respondents were to pay the remaining sale-consideration of Rs.61,00,000/- upto April, 2020. Learned counsel argues that viewing from any angle the petitioner's application for rejection of plaint has been wrongly dismissed. It is thus prayed that the present revision petition be allowed.

At this stage, though notice of motion had not been issued, Dr. Deepak Jindal, Advocate appeared on behalf of respondents No.1 and 2. He pointed out that the petitioner has, in fact, become dishonest in his intention after having received a sum of Rs.20,00,000/- by way of cheque. Learned counsel for respondents No.1 and 2 has circulated a copy of allotment of the land of 18 Kanals 2 Marlas in favour of Chanchali Bai on 10.07.2019 and Sanad, it is submitted, in respect of the same has also been issued, though learned counsel for the petitioner, at this stage, denies knowledge of such document. Learned counsel for respondents No.1 and 2 seeks dismissal of this revision petition.

I have heard learned counsel for the parties and have gone through the file.

Copy of the plaint filed by respondents No.1 and 2 is attached as Annexure P1 with this petition. Averments therein, have been mentioned in the foregoing paras. Copy of application under Order 7 Rule 11 CPC for rejection of

the plaint, filed by the present petitioner is attached as Annexure P2. It is to be

noticed that the present petitioner has admitted execution of the agreements to sell dated 15.05.2017 and 09.07.2019, though it is mentioned in the application for rejection of the plaint that the present petitioner was pressurized to execute the said agreements. Surprisingly, the petitioner, on one hand, has admitted execution of agreements to sell and on the other hand, is now seeking rejection of the plaint on the ground that he is not the actual owner of the land as described in the plaint. The petitioner has taken a further plea that it is the plaintiffs, who were unable to carry out the terms and conditions of the agreements, therefore, the plaint deserves to be rejected. It is further to be noticed that there is no specific denial of the allotment of land on 10.07.2019 as informed by learned counsel for respondents No.1 and 2 during the course of hearing of this matter, though same is denied for want of knowledge by the learned counsel. Be that as it may, in the given factual matrix, I do not find any merit in the arguments raised on behalf of the petitioner. There is no justification for rejection of the plaint under Order 7 Rule 11 CPC for failure of the plaintiff to disclose a cause of action. Correctness of the averments are not to be weighed by the court, at this stage.

The Hon'ble Supreme Court in Liverpool & London S.P. & I Asson. Ltd. v. M.V. Sea Success I and another, 2004(9) SCC 512 has clearly observed as under:-

“151. It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.”

The learned trial court has thus correctly appreciated the matter and

rightly rejected the petitioner’s application for rejection of the plaint vide impugned order dated 09.10.2020.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, perversity or infirmity in the impugned order dated 09.10.2020 (Annexure P4) passed by the learned Civil Judge (Junior Division), Gurugram, which calls for any interference by this Court in exercise of revisional jurisdiction.

Revision petition is, accordingly, dismissed with no order as to cost.

January 6 , 2021.	(LISA GILL)
‘om’	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No