

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2381-2021

Date of Decision: 26.10.2021

Darshan Singh and others

. . . . Petitioners

Vs.

Pardeep Singh and others

. . . . Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO

Present: - Mr.Abhilaksh Grover, Advocate, for the petitioners.

M.S. RAMACHANDRA RAO, J.

This Revision is filed challenging order dt. 12.8.2021 passed by Civil Judge (Jr. Divn.), Dera Bassi dismissing an application under Order 7 Rule 11 CPC filed by the petitioners/defendants No.1 to 3 in CS-240-2019.

The suit

The said suit was filed by respondent Nos. 1 to 4 / plaintiffs challenging the legality of the registered Will dt. 21.02.1989 allegedly executed by late Sh. Surjan Singh in favour of late Sh. Pawan Kumar, husband and father of petitioners No.2 & 3/defendants No.2 & 3, and brother of defendant no.1. Relief of possession of certain property described in the suit schedule and other reliefs were also sought therein.

The application under Or.7 Rule 11 CPC filed by defendant nos. 1-3

The petitioners herein had filed the application under Order 7 Rule 11 CPC to reject the plaint contending that the plaintiffs/respondents No.1 to 4 have sought a declaration that they are successor-in-interest of

late Surjan Singh and that Will dt. 21.02.1989 allegedly executed by him is null and void, and for relief of mandatory injunction to defendants No.4 & 5 to incorporate the name of the plaintiffs and proforma defendants in record of membership in respondent No.6-Society (a society registered under the Punjab Cooperative Societies Act, 1961) [for short 'the Act'].

According to the petitioners, the father of the plaintiffs had earlier filed a similar suit for the same relief on the basis of the same cause of action for relief of declaration against the petitioners in 1996 which was decided in 2010; that father of the plaintiffs also filed another suit for permanent injunction against the petitioners/defendants, which was also decided in 2010; and after already losing the battle, the plaintiffs are trying to start a new bout of litigation for the same relief and on the basis of the same cause of action which is not permitted by law.

It is alleged that institution of the suit CS-240-2019 for the similar relief as in the earlier suit, is barred under the provisions of the CPC; that the plaintiffs, at the time of withdrawing the earlier suit, did not seek any relief to file the suit afresh seeking the same relief as is sought in the present case; therefore, Order 23 Rule 1(4) of CPC bars the said suit CS-240-2019. It is also asserted that the suit is barred by Order 2 Rule 2(3) CPC. Further it is contended that there is a remedy available under Section 55 of the Act for settlement of disputes and all members of the Cooperative Society and the Civil Court would not have any jurisdiction to deal with the same.

The reply of respondents 1 to 3 /plaintiffs

Reply to the same was filed by the plaintiffs/respondents No.1 to 3 opposing this application. They denied the averments of the petitioners/defendants No.1 to 3 and contended that they have independent rights to the suit property, that they had also challenged the Will dt. 21.02.1989 which was not done in the earlier suits, and there was no decision on merits in any of the suits on this aspect.

It is also contended that where parties to the suit and their cause of action are different, then the suit is not barred by any law, and it is a matter requiring trial and cannot be decided at the initial stage in an application under Order 7 Rule 11 CPC.

It is contended that the plaintiffs were minor at that time when the earlier suits were filed by one Pawan Kumar and Darshan Kumar against Jarnail Singh etc. and when Dev Kumar, Jarnail Singh and Punjabi Devi filed against Darshan Kumar etc.

It is further contended that authenticity of the Will can only be decided by the Civil Court and the bar contained in Section 55 of the Act has no application.

The order of the Civil Judge (Jr.Division), Dera Bassi

Vide order dt. 12.08.2021, the Civil Judge (Jr. Divn.), Dera Bassi dismissed the application under Order 7 Rule 11 CPC observing that the plaintiffs in CS-240-2019 challenged the legality of registered Will apart from claiming relief of declaration of status and possession, and that their predecessor-in-interest earlier filed two civil suits, but the same had been dismissed for default in 2010, but there was no decision on merits.

It is further held that as per the pleadings in the plaint, the plaintiffs had filed the suit by claiming their right independently with regard to the suit property; they had specifically pleaded a cause of action for impugning the legality of registered Will, and in the earlier suits the said registered Will was also not challenged.

It held that provisions of Order 23 Rule 4 CPC and Order 2 Rule 2 CPC are not applicable since the earlier suits were not decided on merits but had been dismissed in default.

It also held that the bar contained in Section 55 of the Act is not attracted since the validity and legality of the registered Will can only be decided in a civil suit, and it cannot be referred to a Registrar for adjudication under Section 55 of the Act.

Challenging the same this revision is filed by petitioners.

Contentions of Counsel for petitioners

Counsel for the petitioners contended that the order passed by the Court below is erroneous; and since the predecessor of the plaintiffs had lost earlier suits they are not entitled to file instant suit CS-240-2019; and the bar under Section 55 of the Act is also attracted.

Counsel for the petitioner, however, did not dispute the fact that the legality of a registered Will, such as the one pleaded by the plaintiffs in CS-240-2019, can only be decided by a Civil Court and a dispute of that nature cannot be referred to the Registrar under Section 55 of the Act.

That apart, CS-1996-2006 had been filed by one Dev Kumar, Jarnail Singh (father of the plaintiffs), and one Punjabi Devi (grand-

mother of the plaintiffs) against defendants No.1 to 3 in CS-240-2019, but it was dismissed for default on 17.05.2010 without there being any adjudication on merits.

The Civil Suit bearing CS-375-2004 filed by defendant No.1 in CS-240-2019 and Pawan Kumar (husband and father of defendants No.2 & 3 therein), respectively, against the father and grand-mother of the plaintiffs and others was also dismissed for default on 30.11.2010 without any adjudication on merits.

In those suits, there is no challenge to the registered Will dt. 21.02.1989 allegedly executed by late Surjan Singh in favour of late Pawan Kumar, husband and father of defendants No.2 & 3, respectively and Darshan Singh defendant No.1.

Having regard to the fact that the dismissal of the earlier suits was for default and not on merits, it cannot be said that the instant suit CS-240-2019 is barred under Order 23 Rule 4 CPC and Order 2 Rule 2 CPC, particularly when the plaintiffs are claiming in their own right the subject property according to the pleadings in the suit.

Therefore, I do not see any error of jurisdiction in the impugned order passed by the court below warranting interference by this Court with it in exercise of its power under Article 227 of the Constitution of India.

The Revision Petition is accordingly dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

26.10.2021

Vivek

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