

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

Civil Revision No.2661 of 2021 (O&M)

DATE OF DECISION: 08.11.2021

Ram Ji Lal and othersPetitioners

versus

Dariyav Singh and othersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vivek Suri, Advocate for the petitioners

ALKA SARIN, J.

Heard through video conferencing.

The present Civil Revision under Article 227 of the Constitution of India has been preferred for setting aside the order dated 11.10.2021 passed by the Civil Judge (Junior Division), Narnaul whereby the application filed by the petitioner-defendant Nos.1 to 3 under Order 7 Rules 10 & 11 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) has been dismissed.

The brief facts relevant to the present case are that the plaintiff-respondent Nos.1 and 2 herein filed a suit for declaration and perpetual injunction challenging inter-alia the order dated 29.05.2015 passed by the Director Consolidation-cum-Revenue Commissioner, Gurugram and order

dated 28.12.2016 passed by the Consolidation Officer-cum-Tehsildar, Narnaul. It was pleaded in the plaint that the orders under challenge had been passed under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred as the “Consolidation Act”) without affording an opportunity of hearing to the plaintiff-respondents Nos.1 and 2.

An application (Annexure P-6) was preferred by the petitioner-defendant Nos.1 to 3 under Order 7 Rules 10 and 11 CPC read with Section 151 CPC for rejection of the plaint on the ground that as per Section 44 of the Consolidation Act the jurisdiction of the Civil Courts was specifically barred in matters arising under the Act.

A reply (Annexure P-7) was filed by the plaintiff-respondent Nos.1 and 2 to the said application wherein it was stated that when revenue authorities acted in excess of the jurisdiction vested in them or acted illegally or in contravention of the mandatory provisions, the jurisdiction of the Civil Court could be invoked. It was further pleaded in the said reply that the revenue authority did not even notify the owners and the people in possession of the property in dispute before adjudicating the application ascertaining the rights of the owners and there was violation of the principles of natural justice. Vide the impugned order dated 11.10.2021 the said application was dismissed by the Court of the Civil Judge (Junior Division), Narnaul.

Heard the learned counsel for the petitioners.

In the present case, the civil suit (Annexure P-1) has been filed for declaration to the effect that the plaintiff-respondent Nos.1 and 2 are co-sharers and owners in possession of Gair Mumkin land measuring 4 marlas

comprised in Khewat No.70, Khatoni No.92, Khasra No.389 situated within the revenue estate of Village Nangal Katha, Hadbast No.122 as depicted in the Jamabandi pertaining to the year 2014-15 and that the orders passed by the Director Consolidation-cum-Revenue Commissioner and by the Consolidation Officer were illegal, null and void, without jurisdiction and had been passed without affording any opportunity of hearing to the plaintiff-respondent Nos.1 and 2.

Learned counsel for the petitioner-defendant Nos.1 to 3 has contended that the proceedings before the consolidation authorities stood finalized and implemented and that there was no occasion for the plaintiff-respondent Nos.1 and 2 to have approached the Civil Court. The learned counsel has referred to the orders passed by the consolidation authorities which have been appended to the petition. The learned counsel has, however, not been able to point out from the plaint (Annexure P-1) as to how the suit was not maintainable.

It is trite that on an application under Order 7 Rule 11 CPC only the averments made in the plaint are required to be seen and no other document can be looked at. As far as the jurisdiction of the Civil Court to entertain the suit is concerned, the same does not *prima facie* seem to be barred in view of the law laid down by this Court in the case of **Sube Singh vs. Smt. Chhanno Devi and others**, 2014(4) R.C.R. (Civil) 102 where it has been held:

“18. The sum and substance of the aforesaid discussion is that if the statutory tribunal is acting in violation of the principles of natural justice inasmuch without issuing any notice to the affected party and

passing the impugned order, the Civil Court still would have the jurisdiction to set aside such an order de hors the express exclusion of the jurisdiction of the Civil Court under the Act.”

Prima-facie it appears from a reading of the plaint that the plaintiff-respondent Nos.1 and 2 were depicted as co-sharers in the jamabandi for the year 2014-15 and were not parties before the consolidation authorities. It is also not in dispute that the plaintiff-respondent Nos.1 and 2 were at no point of time served in the consolidation proceedings. In fact, the only ground raised in the application under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of the plaint is that the jurisdiction of the Civil Court was barred in view of the provisions of Section 44 of the Consolidation Act. This issue is no longer *res integra* in view of the law laid down in the case of Sube Singh (*supra*).

In view of the above, I do not find any merit in the present revision petition which is dismissed.

It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

(ALKA SARIN)
JUDGE

08.11.2021
parkash

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
--