

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CR-4861 of 2018
Date of Order: 04.05.2022

Smt. Bhagwan Dei and another

..Petitioners

Versus

Mukesh Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate, for the petitioners.
Mr. Anil Kumar Sharma, Advocate, for the respondentANIL KSHETARPAL, J(Oral)

The petitioners are defendants in a suit filed by the plaintiff claiming decree of declaration. There are various prayers made in the suit, which are extracted as under:-

“12(a) That plaintiff prays a decree for declaration to the effect that the alleged registered deed of transfer Vasika No.1562 dated 10.07.2017 is null and void ab-initio, nonest, beyond scope and competency and same is inoperative on the rights of the plaintiff and as such the same may kindly be set aside and the plaintiff may kindly be declared to be as exclusive owner in possession of the suit property. If at any stage of proceedings, the plaintiff is not proved to be owner of the suit property. Then he may be held as lawful tenant over the suit property as his father was already a tenant and this tenancy was never extinguished or terminated may kindly be passed in favour of the plaintiff and against the defendants with costs of the suit.

(b) That the decree for permanent injunction restraining the defendants, their agents and servants from interfering in the peaceful use and possession of the plaintiff over the suit property with further direction not to oust or dispossess him therefrom and not to take forcible possession of the same illegally and forcibly without following any due process of law forever and they be also restrained from alienating the suit property by way of sale, mortgage or otherwise by creating charge or third party interest over the suit property on the basis of alleged deed of transfer and not to commit any other unlawful act diminishing the value and the utility of the suit property in any manner by way of effecting any

demolition or otherwise by changing the existing nature of the suit property, may kindly be passed in favour of plaintiff and against defendants with costs.

(c) That during pendency of the suit, if the defendants succeed to act of dispossess the plaintiff from the suit property than decree for possession/mandatory injunction directing the defendants to handover the possession of the suit property in order to restore the same to its original position at their own expenses may kindly be passed in favour of the plaintiff and against the defendants.

(d) Any other relief which Hon'ble Court deems fit may also be passed."

It is the case of the petitioner that he, along with his father late Sh. Pyare Lal, used to work in a shop which was previously taken on rent by his father. Subsequently, the aforesaid property was purchased out of love and affection in the name of Smt. Bhagwan Dei (his mother). The petitioner claims that tenancy rights in favour of the plaintiff and his father were not extinguished and the amount of sale consideration was, in fact, paid from the earnings of the shop. It is also asserted that the parties to the suit constitute Joint Hindu Family.

An application filed by the petitioners to reject the plaint at the threshold under Order 7 Rule 11 has been dismissed, correctness whereof has been challenged in this revision petition.

The learned counsel representing the petitioners contends that because the plaintiff claims that the amount of sale consideration was contributed by the plaintiff, therefore, the suit is barred under Section 4 of the Prohibition of Benami Property Transactions Act, 1988. He relies upon the judgment passed in **Pawan Kumar vs. Babulal (since deceased) through his LRs Ramavtar & Ors, 2017(2) WLC (Raj.) (UC) 575.**

It is evident from the reading of the plaint and the prayer clause

that the petitioners have also claimed that their possession over the property continues to be that of a tenant. They have also sought relief of permanent injunction restraining the defendants from interfering in their peaceful possession and enjoyment. It is also claimed that all of them are members of joint Hindu Family.

Keeping in view the aforesaid facts, at this stage, it would not be appropriate to reject the plaint at the threshold. It is well settled that the plaint cannot be rejected in part. The judgment relied upon by the learned counsel representing the petitioners, is distinguishable as the plaintiff in the aforesaid suit had not made any other prayer.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 04, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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