

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

237

CR No.8080 of 2018 (O&M)
Date of Decision : 15.07.2022

Jai Shiv and Another

....Petitioners

VERSUS

Gurjant Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajan Bansal, Advocate for the petitioners.

Ms. Rana Ghuman, Advocate for the respondents.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 01.11.2018 whereby the application filed under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 for rejection of the plaint has been dismissed.

Learned counsel for the defendant-petitioners would contend that it has been admitted in para 9 of the plaint that the plaintiff-respondents had earlier filed a suit for permanent injunction against the defendant-petitioners seeking to restrain them from illegally and forcibly taking possession of the suit land and from alienating any portion of the same, which suit was dismissed under Order IX Rule 8 CPC. It is further the contention that at the time of filing of the earlier suit the possession was with the defendant-petitioners and hence, the plaintiff-respondents ought to have filed a suit for possession at that point of time and, hence, the present suit is barred under the provisions of Order IX Rule 9 CPC.

Per contra learned counsel for the plaintiff-respondents has contended that there was no finding in the earlier suit since the same had

been dismissed under Order IX Rule 8 CPC that the plaintiff-respondents were not in possession of the suit property. Hence, the argument raised by learned counsel for the defendant-petitioners that the previous suit ought to have been filed for possession and not for permanent injunction cannot be looked into at this stage while deciding the application under Order VII Rule 11 CPC.

I have heard learned counsel for the parties.

In the present case, as per averments in the plaint, the plaintiff-respondents had earlier filed a suit for permanent injunction restraining the defendant-petitioners from taking possession of any portion of the suit property and for restraining the defendant-petitioners from alienating any portion of the suit property to any third person. It is further averred that during the pendency of the suit i.e. about three months ago, the defendant-petitioners took illegal and forcible possession of the land and tried to raise construction and, hence, the cause of action arose to the plaintiff-respondents to file the present suit.

Learned counsel for the defendant-petitioners has vehemently contended that the present suit was barred by the provisions of Order IX Rule 9 CPC inasmuch as the earlier suit filed for permanent injunction was dismissed under Order IX Rule 8 CPC. Learned counsel for the defendant-petitioners has further argued that the previous suit though filed for permanent injunction ought to have been filed for possession since the plaintiff-respondents were not in possession of the property at the time of filing of the earlier suit.

Order VII Rule 11 CPC reads as under :

“11. Rejection of plaint - The plaint shall be rejected in the following cases :

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails comply with the provision of Rule 9.*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

It is trite that at the time of deciding an application under Order VII Rule 11 CPC only the contents of the plaint are to be seen. In the present case, as is discernible from a meaningful reading of the plaint, the earlier suit was filed by the plaintiff-respondents for permanent injunction. The said suit

was dismissed under Order IX Rule 8 CPC. The contention of learned counsel for the defendant-petitioners that the said suit ought to have been filed for possession inasmuch as possession had been taken by the defendant-petitioners herein prior to filing of the suit for permanent injunction cannot be looked into at this stage. The said is a defence which can possibly be raised by the defendant-petitioners in their written statement but cannot be a ground for rejection of the plaint under Order VII Rule 11 CPC. While deciding an application under Order VII Rule 11 CPC only the contents of the plaint and the documents attached with the plaint are to be seen. A totally new and fresh cause of action has arisen as per averments made in the plaint and, therefore, the present suit was filed by the plaintiff-respondents for possession.

That being so, I do not find any illegality or infirmity in the impugned order passed by the Court below. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand dismissed.

15.07.2022
jk

(ALKA SARIN)
JUDGE

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