

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1779-2022 (O&M)
Decided on : 02.08.2022

Jagmohan Singh Rai

..... Petitioner

Versus

Swarn Kaur Tung

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sunandan Gaiind, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

CM-5665-CII-2022

Application is allowed as prayed for and Annexures P-1 to P-4
are taken on record.

Main case

Instant petition has been filed under Article 227 of Constitution
of India for quashing the order dated 05.01.2022 passed by Civil Judge, Jr.
Divn., Payal whereby an application under Order 7 Rule 11 CPC moved by
the petitioner for rejection of plaint was dismissed.

Learned counsel for the petitioner submits that the impugned
order is contrary to the settled principles of law and has been passed without
considering the relevant facts. He further submits that the suit in the present
form is not maintainable as share of coparcener cannot be determined and is
not absolute until and unless the property is partitioned by metes and
bounds. He further submits that a coparcener cannot claim partition during

the lifetime of the Karta and hence, the respondent-plaintiff has no cause of action. He still further submits that the respondent-plaintiff is also seeking the relief of permanent injunction to prohibit the petitioner-defendant from alienating the suit property, however, as per the settled provisions of law, a suit for restraining the Karta from alienating the coparcenary property is not maintainable being barred by law. In support, learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Sushil Kumar and another vs. Ram Prakash and others, 1988 AIR 576 and Raghubir Singh vs. Dalip Singh and another, 2004 (37) PLR 599.***

Heard learned counsel and perused the impugned order passed by the Court below.

The respondent-plaintiff has filed a suit for declaration to the effect that she is owner in possession to the extent of 1/5th share in the suit property, which stands detailed in the head of the plaint alongwith consequential relief of permanent injunction to restrain the petitioner-defendant from alienating the suit property by way of sale, transfer, gift, mortgage, lease, exchange or in any manner whatsoever.

A careful reading of the plaint reveals that the respondent-plaintiff has averred therein that the petitioner-defendant is refusing to recognize her as his adopted daughter, which in turn would affect her status as a coparcener in the Hindu Undivided Family. Hence, the moot question would be as to whether or not the adoption was valid, and the respondent-plaintiff was a coparcener or not. This would be a matter of trial and cannot be gone into while adjudicating an application under Order 7 Rule 11 CPC. Therefore, the suit at this stage cannot be said that no cause of action has

accrued to the respondent-plaintiff to file the suit in question or the suit is barred by any law. This Court, therefore, does not concur with the submissions made by learned counsel that the relief prayed for, cannot be granted and hence, the suit be dismissed. It would be too premature to say at this stage as to whether or not the respondent-plaintiff would be entitled to any relief as prayed for and even otherwise, lesser relief of declaration qua her status as coparcener can always be granted by the Trial Court. The case laws relied upon by the learned counsel would not come to his rescue as the facts of the instant case are distinguishable as none of them deal with the provisions of Order 7 Rule 11 CPC.

As a sequel to above, the present petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

02.08.2022

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