

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

CR-1436-2020 (O&M)

Date of Decision : 01.12.2022

Lakhmir Kaur @ Lakhbir Kaur

....Petitioner

VERSUS

Joga Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nandan Jindal, Advocate for the petitioner.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 20.01.2020 whereby the application filed by the defendant-petitioner under Order 7 Rule 11 CPC read with Order 2 Rule 2 CPC has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-respondents filed a suit for declaration to the effect that the impugned sale deed bearing Wasika No.255 dated 10.04.2015 executed by defendant No.1 in favour of defendant No.2 in respect of land measuring 27 kanals 00 marlas as fully described in the heading of the plaint did not confer any right on defendant No.2 and further for a declaration to the effect that order dated 09.07.2015 passed by the Court of Sh. Gural Singh Chahal, PCS, Assistant Collector, 1st Grade, Patiala in File No.120/CM dated 29.05.2015 was illegal, null and void as also for permanent injunction. The defendant-petitioner filed an application under Order 7 Rule 11 CPC for rejection of

the plaint primarily on the ground that the suit was barred by the principles of res-judicate and Order 2 Rule 2 CPC.

Learned counsel for the petitioner would contend that this is the third round of litigation and the suit was clearly barred by the principles of res-judicata. In support of his contention, learned counsel has relied upon the judgment of Hon'ble Supreme Court passed in **K.Arumuga Velaiah Vs. P.R.Ramasamy & Anr. [2022 (3) SCC 757]**.

Heard.

Order 7 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.”

A perusal of the above reproduced provision of law clearly reveals that the plaint can be rejected where it does not disclose a cause of action, it is under-valued or the plaint is written upon paper insufficiently stamped or where it appears to be barred by any law.

Section 11 CPC reads as under :

“11. Res Judicata - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

Order 2 Rule 2 CPC reads as under:-

“2. Suit to include the whole claim - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

In order to prove that the principles of res-judicata would apply, the pleadings of the previous litigation would be gone through, issues would need to be framed and the previous judgments would need to be seen before arriving at a conclusion that the same is barred by res judicate. From the meaningful reading of the plaint in the present case the same cannot be made out. Further, in order to prove that the suit is barred by Order 2 Rule 2 CPC also, evidence would be required to be led. In order to show that the suit does not include the whole claim yet again the evidence would have to be looked into.

Learned counsel for the defendant-petitioner is unable to show from a reading of the plaint that the suit is barred by the principles of res-judicata or Order 2 Rule 2 CPC.

Hon'ble Supreme Court in the case of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors. [2021 (3) RCR (Civil) 768]** has held as under :

“21. xxxx

Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No.103/2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application under order 7 Rule 11(d).

22. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the Trial Court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata.

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In the absence of evidence, the issue of res-judicata and the question whether the suit is barred by principles of Order 2 Rule 2 CPC cannot be decided. The judgment relied upon by the learned counsel does not pertain to an application filed under Order 7 Rule 11 CPC and hence cannot be of any aid to the counsel.

In view of the above discussion, I do not find any infirmity or illegality in the order passed by the Trial Court. The present petition being devoid of any merit is dismissed. Pending applications, if any, also stand disposed off.

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

December 01, 2022
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(ALKA SARIN)
JUDGE

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