

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

**Civil Revision No.1275 of 2022
Date of Decision: 20-04-2022.**

Nusrat Ali Khan & Others

...Revisionists-Petitioners

Versus

Farooq Mohd. & Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Navjot Singh, Advocate,
for the revisionists-petitioners.

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MEENAKSHI I. MEHTA, J.

By way of the instant revision petition, the petitioners (arrayed as defendants No.1, 2 & 4 in the Civil Suit and here-in-after referred to as 'the petitioners') have assailed the order dated 24.03.2022 (Annexure P-1) passed by the Civil Judge (Junior Division) Malerkotla (for short 'the trial Court') whereby the application moved by them under Order 7 Rule 11 CPC for seeking the rejection of the plaint in the Civil Suit preferred by respondents No.1 to 3-plaintiffs (here-in-after referred to as 'the plaintiffs'), has been dismissed.

As per the brief factual-matrix resulting in the filing of the present petition, the plaintiffs have filed a Civil Suit (for short 'the subsequent Suit') against the petitioners as well as proforma-respondents No.4 to 9 (for short 'defendants No.3 & 5 to 9') for seeking a decree for declaration to the effect that the petitioners and defendants No.3 & 5 to 7

are not the '**Mujawars**' at the Shrine of Hazrat Shaikh Sadr-ud-Din, Sadr-i-Jahan (Dargah Haider Shaikh) (for short 'the Dargah') at Malerkotla and are not entitled to receive any share in the offerings made at the Dargah and they have also prayed for the relief of permanent injunction to restrain them (the petitioners and defendants No.3 & 5 to 7) from interfering in the management and affairs of the Dargah and from receiving any share of the said offerings. The petitioners moved the above-said application for seeking rejection of the plaint while, *inter-alia*, averring that a Civil Suit bearing No.229 dated 03.06.1998 titled as "**Khalifa Anwar Ahmed Khan and Others vs. Nusrat Ali Khan & Others**" (for short 'the previous Suit') filed in respect of the same subject matter, has already been decided vide the judgment dated 13.08.2007 and the first appeal preferred against this judgment has also been decided by the Appellate Court on 15.03.2016 and presently, 03 (three) Regular Second Appeals arisen out of the judgment and decree passed by the first Appellate Court, are pending before this Court and hence, the subsequent Suit is not maintainable. Vide the impugned order, the said application has been dismissed by the trial Court.

I have heard learned counsel for the petitioners-defendants in this petition and have also perused the file thoroughly.

Learned counsel for the petitioners has contended that in previous Suit, the parties to the subsequent Suit were impleaded as defendants and the subject matter of both these Suits happens to be the same and therefore, the subsequent Suit filed by the plaintiffs, is not maintainable and hence, the plaint thereof deserves rejection and it being

so, the impugned order is not legally sustainable.

However, the afore-raised contention does not hold much water because though both the parties to the subsequent Suit are stated to have been arrayed as defendants in the previous Suit but however, a perusal of the judgment dated 13.08.2007 (Annexure P-4) passed in the previous Suit, reveals that the plaintiffs-Khalifas had filed the said Suit for seeking a decree for declaration to the effect that they were entitled to receive the offerings made at the said Dargah and that defendant No.14 was not a '**Mujawar**' of the same and they had further prayed for the relief of permanent injunction to restrain the defendants, i.e the parties to the subsequent Suit, from receiving the offerings forcibly whereas the subsequent Suit, as discussed in the preceding paragraphs, has been filed by the plaintiffs for seeking declaration to the effect that the petitioners and defendants No.3 & 5 to 7 were not the '**Mujawars**'. Though the Regular Second Appeals arisen out of the previous Suit, are stated to be pending in this Court but however, from the very nature of the above-discussed relief as sought in both the Suits, it becomes quite explicit that the question of the maintainability of the subsequent Suit, would be a mixed question of law and facts and its adjudication would require the appreciation and evaluation of the evidence that may be led by both the parties on the record in support of their respective contentions in this regard. Even otherwise also, it is well-settled that at the time of deciding the application under Order 7 Rule 11 CPC, the concerned Court is to look into the pleadings as set-forth by the plaintiffs in the plaint and it is not supposed to consider the

pleas/defence taken or proposed to be taken by the defendants in their written statement. The petitioners may take up the plea of the maintainability of the subsequent Suit, as may be legally permissible to them, before the trial Court at the appropriate stage but their said plea cannot be taken to be a cogent ground to outrightly reject the plaint under the afore-mentioned provisions.

As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the present revision petition, being *sans* any merit, stands dismissed.

20th April, 2022
seema

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>