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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.1435-2022 (O&M)
Date of Decision:19.07.2022

Savita Kumari

.. Petitioner

Vs.

Rakesh Kumar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Manish Soni, Advocate for the petitioner.

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Manoj Bajaj, J. (Oral)

Savita Kumari-Petitioner has filed this revision petition to challenge the order dated 11.03.2022 passed by Addl. Civil Judge (Sr.Divn.), Sohna in Civil Suit No.CS-470/2017, whereby her application under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

Briefly, the facts of the case are that the petitioner got married to respondent-Rajesh Kumar on 12.02.2013 and thereafter, a matrimonial dispute erupted between them, and respondent-husband filed a suit for declaration with consequential relief of permanent injunction relating to the immovable property bearing House No.12 measuring 150 sq. yards (30x45ft) situated at Block C-2, Rayan Enclave Sohna Road, Naya Gaon Bhondsi, Tehsil Sohna, District Gurugram, pleading that he had paid the total sale consideration of Rs.11,25,000/- and thereafter, spent approximately Rs.40 lacs on it's construction by arranging the said amount from his income, loan on his agricultural land, credit cards, overdraft, LIC policy, etc. by transferring the same in the account of his wife/defendant

his wife, the plaintiff agreed to transfer the ownership rights of suit property in favour of his wife and her father (defendant No.2/Ramesh) through GPA dated 14.01.2016. In July, 2017, defendants claimed themselves to be the owners of the property in question and threatened to oust him, therefore, he filed the suit seeking decree of declaration that he is owner in possession of suit property and defendants be restrained from alienating the property and interfering in his possession.

Upon notice, the defendants filed an application under Order VII Rule 11 CPC on 28.10.2020 and the said application was dismissed by Addl. Civil Judge (Sr. Divn.), Sohna vide order dated 11.03.2022. Hence this petition.

Learned counsel has argued that the suit filed by respondent No.1/plaintiff is not maintainable, as on the same cause of action previously he had filed a suit, but the same was withdrawn by him by making a statement on 03.11.2017 because the plaintiff had not sought any liberty to file fresh suit on the same cause of action. He submits that the suit is hit by Order II Rule 2 CPC and the Court while rejecting the application of the petitioner has not considered the facts and circumstances of the case carefully, resulting in miscarriage of justice to the petitioner. In support of his argument, he has relied upon the decision of “*M/s Shoes East Ltd. Vs. Jainender Jain*”, 2002 AIHC 4890 and “*Diwan Chand Vs. Sardari Lal*, 2009(53)R.C.R.(Civil) 570”. He prays that the impugned order be set aside.

After hearing the learned counsel and considering the submissions made by him, this Court finds that no doubt previously, the plaintiff had filed a suit bearing No.320/2017 titled as *Rajesh Kumar Vs. Savita Kumari* and while withdrawing the same, no liberty was sought by

him, but at the same time, the said withdrawal of suit by plaintiff was not his independent voluntarily decision, as on the said date, the case was fixed for consideration before Mediation and Conciliation Centre, Gurgaon.

During the course of hearing, learned counsel for the petitioner has conceded that indeed on the said date, the parties had compromised, but according to him, no such compromise was placed on record by plaintiff in the present case.

Further, a perusal of the plaint (Annexure P-3) shows that in the earlier suit, defendants were restrained by ad interim injunction, and thereafter, the matter was sent to Mediation and Conciliation Centre, where the settlement was arrived at on 09.08.2017 and pursuant to the settlement, it was agreed by defendants that they will transfer the ownership rights of suit property to the extent of 50% share in favour of plaintiff, who acting on this assurance, withdrew his suit, but as defendants did not keep their word and again threatened to alienate the suit property, so plaintiff again filed the suit. Since, the decision of the defendants to compromise the dispute with the plaintiff was a driving force behind withdrawal of the previous suit, therefore, even if, no liberty was sought by him, it cannot be said that the suit is barred in terms of order 23 Rule 1 sub-rule 3 CPC, as the present suit is founded upon fresh cause of action.

The other argument raised by learned counsel that the second suit is hit by Order II Rule 2 CPC is also misplaced, as it is not a case of splitting of claims as the plaintiff/respondent No.1 has explained compelling reasons for filing this suit on different cause of action. The judgements relied upon by learned counsel are not applicable in the present case.

Perusal of the impugned order shows that Addl. Civil Judge

(Sr. Divn.), Sohna has carefully examined the background of this case and material on record, particularly the pleadings in the plaint while rejecting the application. Thus, this Court has no hesitation in holding that the impugned order does not suffer from any illegality or impropriety.

Dismissed.

19.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No