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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3027-2022 (O&M)
Date of Decision:24.08.2022

Ishwar Dass

.. Petitioner

Vs.

Maan Singh (deceased) through Lrs and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Kashish Garg, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner (defendant No.2) is aggrieved against the order dated 07.05.2022 (Annexure P-5) passed in Civil Suit No.610/2021 by Civil Judge (Jr. Divn.), Bathinda, whereby his application under Order VII Rule 11 CPC for rejection of plaint has been dismissed.

Brief facts of the case are that respondent No.1 (plaintiff) Maan Singh brought a suit for permanent injunction against the defendants, namely, Krishan Dev and Ishwar Dass and prayed for restraining them from interfering in suit property measuring 9 marlas (54-1/2 x 45-1/2) having khewat No.332/323, khatauni No.616, Rect No.48 killa No.22/10(1-19) 22/9(0-3) Rect No.60 killa No.2/12 (0-0) 2/16 (0-14) 2/7(0-8) 8/1 (2-9) 8/3 (1-0) 9/2 (4-9) 9/7 (0-17) 12/2/1 (0-0) 12/2/3 (0-9) 12/2/3 (0-9) 13/2 (5-7) 14/1 (2-12) 17/1 (0-5), situated at village Hajji Rattan, Tehsil and District Bathinda. As per pleadings, the suit property was purchased by plaintiff vide sale deed dated 20.12.1989, whereupon mutation was also sanctioned in his favour. Since then, the plaintiff being owner to the extent of 9/412 share is coming in peaceful possession and when he intended to raise

construction, the defendants started interfering and threatened the plaintiff to involve him in false criminal case. It is pleaded that the defendants have no concern with the suit property and despite plaintiff's request, they are disturbing him and trying to dispossess him.

Upon notice, defendant No.2 (petitioner) filed his written statement, wherein he raised various preliminary objections relating to maintainability, locus standi, concealment of material facts and specifically raised the objection that since no declaration of title is prayed for by the plaintiff, therefore, his simplicitor suit for permanent injunction is not maintainable. On merits, it is pleaded that a perusal of the sale deed relied upon by the plaintiff shows that he purchased 9/412 share of total land measuring 20 kanals 12 marlas, but the boundaries of the purchased property are not contained in the sale deed. It is pleaded that defendant No.2 is owner of 750 sq. yards by virtue of sale deed No.12606 dated 05.11.2008. Further, it is pleaded that the plaintiff has no right or title with the suit property, which is in possession of defendant No.2 and while denying the other averments, it is prayed that the suit be dismissed.

During the pendency of the suit, defendant No.2/petitioner filed an application for rejection of plaint on the ground that simple suit for permanent injunction in the absence of any declaration regarding title is not maintainable and prayed that the same be rejected. The said application was contested by plaintiff, however, the trial Court after examining the rival stand of the parties proceeded to dismiss the application.

Learned counsel for the petitioner has argued that it is settled law that once there is a dispute regarding title of the suit property, the simplicitor suit for permanent injunction is not maintainable, as the plaintiff

is required to seek a declaration regarding title as well. In support of his contention, he has placed reliance upon the decision delivered by Hon'ble Supreme Court in ***Sudhakar Vs. P.Buchi Reddy (dead) by Lrs & Ors, 2008 (2) RCR (Civil) 879***. According to him, trial Court has not appreciated the facts and circumstances of the case carefully and erroneously dismissed the application. He prays that the impugned order be set aside and plaint filed by the plaintiff/respondent No.1 be rejected.

After hearing the learned counsel, considering the above background, particularly the pleadings set up by the parties, this Court finds that they have relied upon different sale instruments in their favour and it cannot be said that the plaint is without any cause of action. Though, the defendant No.2 in the written statement pleaded that the plaintiff has not mentioned the specific boundaries of the land measuring 9 marlas purchased by him, but this alone would not be sufficient to hold that the suit of the plaintiff is not maintainable, because he has based his possessory rights on the basis of title. Besides, the claim of defendant No.2 founded upon the sale deed No.12606 dated 05.11.2008 only relates to 750 sq. yards of total land measuring 20 kanals 12 marlas. Further, maintainability of a suit is a mixed question of law and fact and this issue can be effectively decided only on the strength of the evidence of the parties. Even in Sudhakar's case (supra) relied upon by the learned counsel, the general principle regarding maintainability of a suit for permanent injunction has been examined by the Hon'ble Supreme Court by holding that where a plaintiff is in lawful or peaceful possession of a property, and if such possession is interfered by the defendant, a suit for injunction simplicitor would be maintainable.

Thus, the argument by learned counsel that in the absence of

any declaration of title by plaintiff, his suit would not be maintainable is without any merit. A perusal of the impugned order shows that the trial Court has carefully examined the facts and circumstances of the case before dismissing his application and the said order does not suffer from any illegality or impropriety.

Resultantly, revision petition fails and is dismissed.

24.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No