

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

RSA-597-2021 (O&M)

Date of decision:20.04.2022

Kewal Singh and another

....Appellants

Versus

Chander Shekhar Aggarwal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Bali, Senior Advocate with Mr. Uday Agnihotri,
Advocate for the appellants.

Mr. Gaurav Chopra, Senior Advocate with Mr. Reshabh
Bajaj, Advocate, Mr. Gorang Gupta, Advocate and Mr.
Dhruv Sood, Advocate for respondent no.1.

Mr. Abhimanyu Tewari, Advocate with Mr. Harshit Jain,
Advocate for respondents no.2 and 3.

Mr. D. V.Sharma, Senior Advocate with Mr. Vaneet Soni,
Advocate and Mr. Tushar Sharma, Advocate for
respondents no.6, 7 and 9.

Mr. Piyush Aggarwal, Advocate for respondent no.10.

ANIL KSHETARPAL, J

Questioning the correctness of the judgments passed by the
courts below, while rejecting their plaint under Order 7 Rule 11 Code of
Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), the plaintiffs
have filed this Regular Second Appeal. At the outset, it is important to
note that the issue which arises for consideration before this Court is

*“Is it appropriate for the court to reject a plaint on the
grounds which are beyond the scope of Order 7 Rule 11 CPC?.”*

On 15.09.2021, learned senior counsel representing the appellants contended that the appellants are prepared to amend the suit to include the relief of specific performance and pay ad valorem court fee.

The plaintiffs filed the suit for grant of decree of permanent injunction on the basis of an agreement to sell dated 24.02.2020 executed by defendant no.1 in their favour with respect of 140 acres of land on payment of Rs.3.59 crores as earnest money (through RTGS transactions) out of total sale consideration of Rs. 169.75 crores.

Defendant no.1 Chander Shekhar Aggarwal is stated to have entered into an agreement to sell with the plaintiffs. The relevant terms of the agreement to sell read as under:-

(i) That the VENDOR has received a Sum of Rs. 3,59,00,000/- (Rupees Three Crore Fifty Nine Lac only) as an advance/earnest money from the VENDEE through RTGS against the Agreement details are annexed as Annexure 2.

(ii) The balance amount of Rs. 166,16,00,000/- (Rupees One Hundred Sixty Six Crore and Sixteen Lac Only) of the said Land shall be paid by the VENDEE to the VENDOR at the time of registration of sale deed of the said Land before the concerned Sub-Registrar.

(iii) That the VENDEE shall get a minimum of 70 Acres i.e. half of the total land registered within a time period of 3 months from the day of production of the mutation/ownership on the name of VENDOR

(iv) The VENDEE has agreed to get the registration done of the remaining Land within a time period of 6 months from the day of production of the mutation on the name of VENDOR.

(v) The VENDEE is empowered to get the property registered or get the sale complete in part or full, either in his/her own name or in the name of his/her nominee/s or in the name of any other person for which the VENDOR shall have no objection.

(vi) All the expenses in respect of registration of sale deed/attorney documents, stamp duty, registration charges, and other Misc. expenses

shall be borne by the VENDEE.

(vii) The property to be transferred/sold under this agreement is free from all encumbrances, sale, mortgage, loan, dispute, litigation, gift court attachment, etc. and the VENDOR shall give the peaceful vacant physical possession of the said property to the VENDEE at the time of registration of sale deed. All the outstanding dues such as of water, electricity, sewer, etc. installed in the said property shall be cleared/paid by the VENDOR up to the date of registration of sale deed/attorney documents etc.

(viii) That the VENDEE shall be liable to get registered sale deed in his/her own name or in the name of any nominee or in the name of any other person within stipulated period.

(ix) That in case the VENDOR violate to the terms and conditions of this Agreement to Sell or refused to sign Sale Deed within stipulated period then the VENDEE shall be entitled to get registered sale deed through court of law or SPECIFIC PERFORMANCE OF CONTRACT BY COURT OF LAW at the cost and expenses of the VENDOR. IN ADDITION AS THE VENDOR IS HAVING 99 YEARS RIGHTS ON THE SAID LAND"ALL RIGHTS AND POSSESSION OF LAND WILL BE GIVEN TO VENDEE."

It is being asserted that defendant no.1, in collusion with defendant no.2 to 9, has defrauded the plaintiffs. When the plaintiffs confronted defendant no.1, he delivered possession of 20 acres of land on the National Highway, out of the total land agreed to be sold and assured the plaintiffs that defendant no. 2 to 9 are not only known to him but they work under his directions and the agreement to sell will be honoured. The suit was filed for the following relief:-

"It is, therefore, the plaintiffs most humbly prayed that in view of the submissions made hereinabove, the present suit may kindly be allowed and this Hon'ble Court may kindly pass a decree for permanent injunction restraining the defendants from

alienating or creating any third party interest in the suit property and also restraining the defendants from interfering or dispossessing the plaintiffs from the physical possession of 20 acres of land fully shown in the Aks Shizra Plan marked with red boundaries be passed in favour of the plaintiffs against the defendants in respect of the land measuring 140 acres situated in revenue estate of Village Sidhrawali, Tehsil Manesar, District Gurugram as per Jamabandi/Mutation duly sanctioned. (Copy sanctioned).

With any other order which this Hon'ble Court may deem fit and proper be also passed in favour of the plaintiffs against the defendants.”

Various applications under Order 7 Rule 11 CPC were filed. It was primarily contended that defendant no.1 is not the owner of the property and this fact is in the knowledge of the plaintiffs and therefore, the suit for injunction is not maintainable against the true owner.

The plaintiffs contested those applications by filing a detailed reply. The trial court rejected the plaint while recording the following reasons:-

1. Defendant no.1 is not the owner and since this fact is in the knowledge of the plaintiffs, therefore, the suit for injunction cannot be maintained against the true owner.
2. The suit is essentially for recovery of Rs.3.59 crores paid as earnest money for which plaintiffs can file a suit for recovery.

The First Appellate Court recorded the following reasons:

- a. The defendant no.1 is not the owner and hence, it is

illogical that he will agree to sell the property.

b. The relief against defendant no.2 to 7 cannot be claimed because there is no privity of contract.

c. As regards delivery of possession of 20 acres of land, defendant no.1 never was in possession and therefore, he could not have delivered the possession which he himself never had. Defendant no. 2 to 7 have leased out the property to defendants no.8 and 9 on 24.11.2017 and there is no document of delivery of possession.

d. The First Appellate Court also held that it is a frivolous suit, which should be shown the way out, at the threshold.

Heard learned counsel representing the parties at length and with their able assistance perused the paper book. Learned counsel representing the parties have also filed their written synopsis alongwith the gist of their arguments. Learned counsel representing the appellants contends that the orders passed by the courts below are patently erroneous. While rejecting the plaint, the court is required to examine the assertions made in the plaint. It has been contended that it is evident that the plaint filed by the plaintiffs does not fall within the mischief of the six grounds mentioned under Order 7 Rule 11 CPC. He further contended that since the plaintiffs are now prepared to amend the suit and pay ad valorem court fee thereupon, therefore, the judgments passed by the courts below should be set aside.

Per contra, learned counsel representing respondent no.1 has fairly admitted that the orders passed by the courts below are not sustainable and therefore, he is not in a position to defend the imugned

order. On the other hand, Sh. Abhimanyu Tiwari, learned counsel representing defendants no. 2 and 3 has contended that the courts below have correctly passed the order while rejecting the plaint as defendant no.1 is not the owner of the property. In the absence of privity of contract between the plaintiffs and actual owners i.e defendant no.2 to 7, the suit is not maintainable. No cause of action exists in the suit, particularly, when the plaintiffs admit that defendant no.1 has no title over the land. He also relies upon the judgment passed by the Supreme Court in **Roop Lal Sethi vs. Nachhattar Singh Gill 1982 (3) SCC 487**, **A.Arivandandam vs. T.V.Satyapal 1977 (4) SCC 467**, **State of Orissa vs. Klaockner and Company 1996 (8) SCC 377**. He further contends that the Court should not grant any opportunity to the plaintiffs to cure the procedural defects at the stage of regular second appeal. It is also projected that the High Court is bound by the scope of Regular Second Appeal under Section 41 and 42 of the Punjab Courts Act, 1918 and also that by virtue of Section 41 (h) of the Specific Reliefs Act, 1963, the suit is barred.

Sh. D.V.Sharma, learned senior counsel representing respondent no.6, 7 and 9 has contended that the plaintiffs have played fraud and therefore, their suit is vexatious and hence, liable to be rejected. He further contends that if the permission to amend the suit is granted, the objection of respondent no.6, 7 and 9 as regards the application under Order 2 Rule 2 CPC would stand frustrated. Mr. Piyush Aggarwal, learned counsel representing respondent no.10 has reiterated the arguments and submitted that the amendment should not

be allowed.

On a careful reading of Order 7 Rule 11 CPC, it is evident that the plaint at the threshold can be rejected, only if the parameters laid down under Order 7 Rule 11 CPC are fulfilled. In the present case, learned counsel representing respondent no.2 to 6 has tried his best to bring the case of the plaintiffs under Order 7 Rule 11 (clauses a and d) CPC. Clause (a) provides that the plaint shall be rejected where it does not disclose a cause of action, whereas, clause (d) provides for rejection where the suit appears from the statement in the plaint to be barred by any law.

Let us now examine the plaint on the basis of clause (a) of Order 7 Rule 11 CPC. Clause (a) is restricted to a situation where cause of action has not been disclosed in the plaint. In the present case, the plaintiffs have asserted that despite their repeated requests, the defendants have not honoured their agreement and are adamant to commit fraud with the plaintiffs. Thus, the plaintiffs have asserted that they have a proper cause of action to file the suit. It has also been asserted in the plaint that defendant no.1 in collusion with his associates Smt. Anjali Bhardwaj, Sh. Nirmal Jain, Shiver Jain, Nikhil Jain, Monica Jain, Rakesh Arora and Rajiv Arora have prepared various false and fictitious documents and collected Rs.100 crores and thereafter, illegally compromised the matter by grabbing Rs.60 crores from the prospective buyers.

The phrase 'cause of action' is a bundle of facts which are made the basis for filing a litigation. Such a bundle of facts

cumulatively provide a cause of action to the plaintiffs to file the suit.

As already noticed that neither of the courts have found that the plaintiffs do not have a cause of action. In the considered opinion of the Court, both the courts have, in fact, committed manifest error in rejecting the plaint on a ground which does not fall in the ambit of Order 7 Rule 11 CPC. Now, the Bench proceeds to examine Order 7 Rule 11(d) CPC. It provides for a situation where the suit appears from the statement in the plaint to be barred by any law. As already noticed, both the courts have not held that the suit is barred by law. In the written arguments, respondent no.2 and 3 have tried to project that the suit is barred under Section 41(h) of the Specific Relief Act, 1963. Section 41(h) provides that when an equally efficacious relief can certainly be obtained by any usual mode of proceeding except in case of breach of trust, then injunction cannot be granted. In any case, the aforesaid discussion is academic, particularly, when the plaintiffs have already undertaken to include the relief of specific performance, after paying the ad valorem court fee.

The next argument of the learned counsel representing respondent no.2 and 3 is with regard to the fact that defendant no.1 had no title. Since defendant no. 2 to 7 are the owners, with whom the plaintiff has no privity of contract, therefore, the suit is not maintainable. It may be noted here that the plaintiffs have specifically pleaded that defendant no.1 assured that defendants no.2 to 9 are his own persons and they will honour the agreement to sell. The plaintiffs have also asserted that they have been delivered possession of 20 acres of land

by defendant no.1. It is also evident from a careful reading of the plaint that defendants no. 2 to 7 are incorporated companies. Defendant no.1 being authorized representatives of defendant no.2 to 7 executed a lease deed for a period of 99 years in favour of defendant no.8 and 9. Furthermore, there was an agreement dated 30.11.2006 between defendant no. 1 and defendant no. 2 to 7 for a period of 99 years commencing from 1.04.2007 to 31.03.3106. Defendant admits receipt of most of the amount, however, claims that such amount was received as a loan and the agreement to sell has been scribed on a blank paper. In such circumstances, an important issue arose. Hence, it was not correct on the part of the courts to reject the plaint. With regard to the argument of the learned counsel that there is no privity of contract between the plaintiffs and defendant no.2 to 7, it may be noticed that the court only after lifting the corporate veil, can examine what is the actual position. This is possible only if the trial of the suit is permitted to proceed.

Further, it has been laid down in the judgment of **Saleem Bhai vs. State of Maharashtra, AIR 2003 SC 759** and reiterated in the recent judgment of **Sri Hari Hanunandas Totala vs. Hemant Vithal Kamant and others, 2021 (9) SCALE 241** that to reject a plaint, only averments made in the plaint are germane, the plea taken in the written statement is wholly irrelevant. It was held that where the court has to examine the written statements, then such a plea is beyond the scope of Order 7 Rule 11 CPC.

The last argument of the learned counsel representing respondent no.2 and 3 is also to be noted and rejected as Section 41 of

the Punjab Courts Act, 1884, does enable the court to interfere if there is manifest injustice and the orders passed are patently erroneous. In the present case, the orders passed are not only patently erroneous but suffers from material errors of law.

Now, let us analyze the argument of the learned senior counsel Sh. D.V.Sharma. He has stated that the plaintiffs and defendant no.1 have played fraud. This matter can be examined only after the parties are permitted to lead evidence. Similar is the position with regard to the allegations that the suit is vexatious.

As regards, the objection of the learned senior counsel that if the plaintiffs are permitted to amend the plaint, they will loose the opportunity to object to the maintainability of the suit for specific performance of the agreement to sell under Order 2 Rule 2 CPC. At this stage, Order 2 Rule 2 CPC will not apply in the facts and circumstances of the case. In the present case, a deemed decree has been passed under Order 7 Rule 11 CPC which is not on merits of the case. Once the order of rejection is set aside, the decree shall loose force. The present suit, no longer, stands decided on merits for the application of Order 2 Rule 2. Even otherwise, it may be noted here that this Court has just noticed the contention of the learned counsel representing the plaintiffs. Remaining aspects will be examined by the trial court as and when application for permission to amend the plaint is filed.

As regards the various judgments relied upon by the learned counsel representing the respondent no.2 and 3, it may be noted here that in Roop Lal Sethi's case (supra), the Supreme Court was examining the

maintainability of the election petition, particularly, when the High Court, in exercise of powers under Order 6 Rule 16 CPC deleted paragraphs 4 to 18 of the election petition. The court found that Order 7 Rule 11 CPC (a) is not applicable and therefore, allowed the appeal. The court also held that the plaint has to be rejected as a whole and only a part of the plaint cannot be rejected.

In **A.Arivandandam's** case (supra), the court noticed that multiple legal proceedings in order to evade an eviction order were filed. The court, after noticing the aforesaid facts, ordered vacation of the injunction order, which resulted in an appeal and thereafter, matter came before the Supreme Court. The Supreme Court, after finding that the suit was manifestly vexatious and meritless, passed the order. In **State of Orissa** (supra) the court examined the matter in the context of existence of an arbitration agreement. The High Court rejected the plaint under Order 7 Rule 11 CPC clause (d). The matter was covered by Foreign Award (Recognition and Enforcement) Act, 1961.

Hence, it is evident that none of the judgments relied upon by the learned counsel representing respondent no.2 and 3 advance their case. The aforesaid judgments have been delivered in the facts of the case.

Consequently, in view of the aforesaid discussion, the RSA is allowed. The orders passed by the courts below are hereby, set aside and the matter is remitted back to the trial court to proceed with in accordance with law. The parties through their counsel are directed to appear before the trial court on 28.05.2022.

All the pending miscellaneous applications, if any, are also disposed of.

20.04.2022
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE