

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

CR No.4337 of 2019 (O&M)
Date of decision: 15th November, 2022

Gulzar Singh Monga

... Petitioner

Versus

Kulbhushan Monga & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Piyush Kant Jain, Advocate for the petitioner.
Mr. Joginder Singh, Advocate for respondents No.1 and 2.
None for respondent No.3.

MANJARI NEHRU KAUL, J.

CM No.5286-CII of 2022

The instant application has been filed for impleading LR of the petitioner. The averments made in the application that the petitioner Gulzar Singh Monga has since expired on 04.10.2019, are duly supported by copy of the death certificate and sworn attested affidavit of the applicant.

Learned counsel for the non-applicant/respondents submits that he has no objection in case the prayer for impleading LR of the petitioner is allowed.

In the light of the same, the application is allowed and the lone legal heir detailed in para No.2 of the application is allowed to be

impleaded as Legal Representative of the deceased petitioner. However, it is made clear that the same shall be purely for the decision of the present matter and shall not be used for any collateral purpose.

Amended memo of parties is taken on record.

CR No.4337 of 2019

The petitioner-defendant is impugning the order dated 29.05.2019 (Annexure P-2) passed by the Additional Civil Judge (Sr. Divn.), Panchkula in civil suit titled as 'Kulbhushan Monga & another vs. Gulzar Singh Monga and another' whereby his prayer for deciding issue No.10 as preliminary issue in accordance with Order 14 Rule 2(2) CPC was declined.

Learned counsel appearing for the petitioner inter alia contends that the impugned order suffers from patent illegality and is contrary to the settled principles of law. He submits that the respondents/plaintiff had instituted a simplicitor suit for declaration qua ownership of the suit property. However, during the pendency of the suit in question, the authority constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as, 'the Act') passed an eviction order against the respondents. Learned counsel, has invited the attention of this Court to the orders dated 05.07.2016 (Annexure P-7) passed in LPA No.582 of 2016 by this Court and submitted that it stood noticed therein that possession of the suit property had been handed over to the petitioner and hence there

was no manner of doubt that the respondents were no longer in possession of the same.

Learned counsel submits that in the above circumstances, a simplicitor suit for declaration without seeking consequential relief of possession would not be maintainable in view of the bar created by proviso to Section 34 of the Specific Relief Act. He submits that the trial Court, while passing the impugned order, failed to appreciate that the maintainability of the suit in question would thus be a pure question of law in view of the admitted position qua the dispossession of the respondents in due course of law. Learned counsel has thus, argued that issue No.10 should have been treated as a preliminary issue by the trial Court as the decision in the affirmative of this issue would have disposed of the entire case itself which was erroneously not done.

Learned counsel, still further submits that the decision upon the said issue would require no evidence at all except the order dated 05.07.2016 (Annexure P-7) passed by this Court which as it is, is admissible per-se. Furthermore, he contends that even the respondents in their reply to the application under Order 14 Rule 2(2) CPC moved by the petitioner, had not disputed, rather admitted to their dispossession, thus the judicial order dated 05.07.2016 coupled with the admission of the respondents in their reply would clarify that the suit of the respondents was clearly barred. It has also been urged that the decision of the application under Order VII Rule 11 CPC would not in

any manner adversely affect the application moved by the petitioner under Order 14 Rule 2(2) CPC, as the scope of both these provisions of law was different. In support, learned counsel has placed reliance upon **‘Davinder Lal Mehta vs. Dharmender Mehta & another’ 2010 (7) RCR (Civil) 2436; ‘Mohamed Yasin vs. Abdul Kalam & another’ 1987 CivCC 80; ‘S.G. Badrinath vs. V. Jagannathan & another’ 2004 AIR Madras 161; ‘Kartara vs. Phul Patti & others’ 2011(3) RCR (Civil) 357; and ‘Ram Saran & another vs. Ganga Devi’ 1973 (2) SCC 60; ‘Sukhbiri Devi & others vs. Union of India & others’ 2022 LiveLaw (SC) 810; ‘The Jamia Masjid vs. Sri K.V. Rudrappa (Since Dead) by LRs & others’ LL 2021 SC 491.**

Per contra, learned counsel representing the respondents, while controverting the submissions made by the counsel opposite, vehemently contends that the impugned order cannot be faulted with as it is in consonance with the settled law and thus, warrants no interference by this Court. Learned counsel submits that it is an admitted fact that the respondents were in possession of the suit property at the time of the institution of the suit in question, therefore, any subsequent development would not come in their way to pursue their suit. It has been further submitted that even otherwise, it is a settled principle of law that a simplicitor suit for declaration by a co-owner against other co-owners of the property would be maintainable even in the absence of a prayer for relief of possession of the said

property. In support, learned counsel has placed reliance upon ‘**Lal Singh vs. Ajit Singh & another**’ 2008(3) RCR (Civil) 650; and ‘**Sucha Ram (since deceased) th. LRs & others vs. Lachhman Dass & others**’ (RSA-3110-2010 d/d 14.01.2020 by Pb. & Hy. High Court).

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be relevant to reproduce Order XIV Rule 2 CPC, which reads as under:-

“ORDER XIV: Settlement of issues and Determination of Suit on issues of Law or on Issues agreed upon

XXXX XXXX XXXX
XXXX XXXX XXXX

2. Court to pronounce judgment on all issues

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until

after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

A perusal of Order XIV Rule 2(2) CPC reproduced hereinabove, leaves no manner of doubt that in case whole of the suit or any part thereof can be disposed of on the issue of law alone, then such issue may be decided first if it pertains to jurisdiction of the Court or qua any bar to the suit created by any law for the time being in force.

It would also be apposite to reproduce issue No.10 framed by the trial Court, for dealing with the controversy in question, which reads as follows:

“10. Whether the suit filed by the plaintiff is not maintainable in view of bar under proviso to Section 34 of this Specific Relief Act, 1963 as the plaintiff has omitted to seek consequential relief of possession? OPD”

The above reproduced issue No.10 deals with the maintainability of the suit in question as to whether the same would be barred in view of the proviso to Section 34 or not. Thus, it being purely an issue of law, the decision in affirmative, if it is so, on the said issue would definitely lead to the disposal of the suit in question. That being so, the next question which arises is whether issue of maintainability of the suit can be decided as a preliminary issue under Order 14 Rule 2(2)(b) CPC or not in the facts and circumstances of the instant case.

In this regard, it would be relevant to refer to the celebrated judgment of the Hon'ble Supreme Court in '**Nusli Neville Wadia vs. Ivory Properties**' (2020) 6 SCC 557, wherein it was held as under:

“51. [...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the Court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the Court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the Court may decide the question of law as to jurisdiction of the Court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. [...] In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to

give a finding on a question of law. Such question cannot be decided as a preliminary issues. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.”

Adverting to the case in hand, the question of maintainability of the suit can be decided as preliminary issue in view of the undisputed facts qua possession having been delivered to the petitioner. Furthermore, merely because some evidence is required to be adduced on this issue, cannot be a ground for refusing to treat issue No.10 as a preliminary issue, more so, when the evidence, which is in the form of judicial order of this Court, would be admissible per se, and has not also been disputed by the respondents themselves.

This Court is of the opinion that if at all, issue No.10 is decided in affirmative, the precious judicial time of the Court would be saved and if the decision is in negative, then the trial would continue for adjudication upon merits of the suit. Further, this Court at this stage, would desist from delving into the question of maintainability of a suit for declaration wherein relief of possession has not been sought for, therefore, the case laws relied upon by the learned counsel for the

respondents would not come to their rescue. They shall, however, be at liberty to urge these grounds before the trial Court.

As a sequel to the above, the instant revision petition is allowed and the trial Court is directed to treat issue No.10 as a preliminary issue and thereafter proceed in accordance with law, without being influenced by any observation made hereinabove by this Court.

(MANJARI NEHRU KAUL)
JUDGE

November 15, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No