

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

CR No.3392 of 2022 (O&M)

Date of decision: 5th September, 2022

Bhabuti Singh

... Petitioner

Versus

Vijay Pal & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Tanmoy Gupta, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The instant revision petition has been filed under Article 227 of the Constitution of India seeking setting aside of the order dated 07.07.2022 (Annexure P1) passed by the Court of learned Civil Judge (Junior Division), Palwal whereby application filed by the petitioner under Order VII Rule 11 CPC in a civil suit filed by the respondent No.1 was dismissed.

Learned counsel submits that the impugned order suffers from patent illegality and is in contravention to the settled principles of law. He further contends that the trial Court, while passing the impugned order, failed to appreciate that the suit land being '*Gair Mumkin Gait*' was being used for purposes subservient to agriculture, thus, the power to partition the said land lay only with the revenue authorities and not with the Civil Court. It was further argued that previously also, the suit

land which formed part of their land holding, had been partitioned by the revenue authorities. Learned counsel therefore, vehemently argued that the respondent was now estopped from approaching the Civil Court for partition, as it was a matter of record that he had been a party to the earlier partition proceedings before the revenue authorities, wherein also the subject matter involved pertained to the suit land and some other land. Learned counsel still further, submitted that the Tehsildar had also confirmed qua the previous partition proceedings which fact stood noticed by the Court below in the impugned order. He further submitted that the respondent/plaintiff had not only concealed the aforementioned partition proceedings in his plaint but also intentionally not disclosed the nature of the suit property. Hence, the plaint being barred under Section 158 of the Punjab Land Revenue Act, 1887, was liable to be rejected. In support of his submissions, learned counsel placed reliance upon **‘Gajjan Singh & others vs. Financial Commissioner Revenue, Punjab & others’ 2019 (2) PLR 653** and **‘Balak Ram vs. State of Punjab’ 2001(4) RCR (Civil) 811**.

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

The petitioner has sought rejection of plaint on the ground of it being barred under law. It would be relevant to reproduce Order VII Rule 11 CPC:

“11. Rejection of plaint

The plaint shall be rejected in the following cases:--

- (a) *where it does not disclose a cause of action;*
- (b) *where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) *where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) *where the suit appears from the statement in the plaint to be barred by any law;*
- (e) *where it is not filed in duplicate;*
- (f) *where the plaintiff fails to comply with the provisions of rule 9;*

PROVIDED that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

A perusal of Order VII Rule 11 (d) of the Code provides for rejection of plaint where the suit appears to be barred by law on the basis of the averments made in the plaint. The Hon’ble Supreme Court in **‘Srihari Hanumandas Totala vs. Hemant Vithal Kamat & others’**

2021(3) RCR (Civil) 768, has held that only statements made in the plaint are to be perused and considered while deciding an application Order VII Rule 11(d) of the Code. The Apex Court further observed that a plea requiring perusal of pleadings, issues and decisions of the previous suit is beyond the scope of Order VII Rule 11 of the Code. It would be pertinent to observe that a plaint cannot be rejected merely on a formal or partial perusal of the same, rather, a meaningful reading of the plaint in its entirety would be necessary to arrive at a conclusion as to whether or not the plaint deserves to be rejected. Further, it needs to be reiterated that while adjudicating upon an application under Order VII Rule 11 of the Code, the defence of the defendants cannot be delved into or taken into consideration.

Adverting to the case in hand, a perusal of the averments made in the plaint do not reveal in any manner whatsoever as to whether the suit land is being used for any purpose subservient to agriculture or otherwise. Still further, at the stage of adjudicating upon an application under Order VII Rule 11 CPC, a Court cannot take into account any previous proceedings, which might have taken place between the parties. Therefore, whether the suit land was a part of the previous partition proceedings before the revenue authorities or not, cannot be considered in the absence of any pleadings to the said effect in the plaint. Similarly, even the purported statement of the Tehsildar in the said regard would be of no consequence.

The case laws relied upon by the learned counsel would not come to his rescue as they do not pertain to the decision on an application under Order VII Rule 11 CPC. As a sequel to the above, the instant revision petition, being devoid of any merit, stands dismissed in limine.

(MANJARI NEHRU KAUL)
JUDGE

September 5, 2022
rps

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