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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3525-2022 (O&M)

Date of Decision:01.09.2022

Vikas Sawhney

.. Petitioner

Vs.

Saroj Sabharwal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Akshay Jindal, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner (defendant No.1) is aggrieved against the order dated 09.08.2022 (Annexure P-4) passed in Civil Suit No.514 of 2019 by Civil Judge (Sr. Divn.) Yamuna Nagar at Jagadhari, whereby his application under Order 7 Rule 11 CPC was partly allowed by directing the plaintiff to affix *advalorem* court fee and objection regarding maintainability of the suit in terms of bar contained in Order IX Rule 9 CPC was declined.

The facts in brief leading to the petition are that plaintiff (respondent No.1) brought a suit for declaration in respect of plot measuring 17 marlas comprised in Khata No.220, Khatauni No.279, Khasra No.114//26/2/4 situated at Mauja Jagadhri, on the basis of a sale deed bearing No.3840 dated 14.10.1980 and sought a declaration that the general power of attorney bearing No.130 dated 21.06.1983 is a forged and fabricated instrument, so the sale deed No.10568 dated 12.03.1991 executed on the basis of forged GPA and subsequent mutation are illegal, null and void. As a consequential relief, a decree for permanent injunction restraining the defendants from either interfering in the peaceful possession

of plaintiff over the suit property or from alienating the same in any manner was also prayed for.

Upon notice, the defendants appeared and filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on multiple grounds including the bar contemplated under Order IX Rule 9 CPC. The defendants relied upon the order dated 02.04.2014 and pleaded that the previous suit bearing No.371 of 2001 brought by plaintiff for the same relief and on the same cause of action was dismissed in terms of Order IX Rule 8 CPC and the application filed by plaintiff for restoration of the suit also stood dismissed on 20.05.2015, therefore, sought rejection of the plaint.

The application was contested by the plaintiff/respondent, however, Civil Judge (Sr. Divn.), Yamunanagar at Jagadhri vide impugned order dated 09.08.2022 partly allowed the same by directing the plaintiff to affix the court fee on the market value of suit property, but rejected the ground relating to maintainability of the suit. Hence, this revision petition.

Learned counsel for the petitioner has argued that it is the case of the plaintiff herself that she had previously filed a suit on the same cause of action, but the said suit was dismissed in default on 02.04.2014, and her application for restoration of the suit also failed, therefore, the filing of the fresh suit would be barred under Order IX Rule 9 CPC. In this regard, he has drawn the attention of the Court to the order dated 20.05.2015 to contend that the application for restoration of suit filed by plaintiff under Order IX Rule 9 CPC was dismissed, therefore, the trial Court could not have rejected the present application by defendants under Order VII Rule 11 CPC on the ground that the provisions of Order IX Rule 9 CPC are not attracted in the present case. He prays that the impugned order be set aside

and the plaint (Annexure P-1) be rejected.

After hearing the learned counsel and considering the material on record, this Court finds that the petitioner/defendant No.1 has challenged the impugned order only to the limited extent, whereby his objection regarding maintainability of the suit has been rejected. The order dismissing the previous suit filed by plaintiff in default passed on 02.04.2014 reads as under:

“Present : None.

None appeared on behalf of plaintiff despite repeated call since morning waited sufficiently. No further wait is justified. It is already 3:15 p.m. It seems that the plaintiff is not interested to pursue the present suit, hence present suit is hereby dismissed in default. File be consigned to record room after due compliance. Announced.”

A perusal of the above clearly indicates that since the defendant had also not appeared on the said date of hearing, therefore, the argument by the learned counsel that the suit was dismissed in terms of Order IX Rule 8 CPC is completely misplaced. Evidently, the above order was passed by the Court, exercising jurisdiction under Order IX Rule 3 CPC, so the prohibition contained in Order IX Rule 9 CPC for filing fresh suit would not be attracted. The application filed by plaintiff for restoration of the suit might have been filed under Order IX Rule 9 CPC, but that alone itself is not sufficient to treat the order dated 02.04.2014 under Order IX Rule 8 CPC. Hence, this Court does not find any merit in the argument.

At this stage, learned counsel for the petitioner has argued that even, if, the order dated 02.04.2014 is treated as an order under Order IX Rule 3 CPC, the plaintiff had two choices i.e. to either bring a fresh suit or to seek restoration of the earlier suit and by having chosen to apply for

restoration of the suit and after dismissal of the said application, she cannot file the fresh suit by virtue of application of *Doctrine of Election*. In support of his argument, he has placed reliance upon the decision of Hon'ble Supreme Court in “State of Rajasthan Vs. Union of India and Other” 2018(12) SCC 83.

In the considered opinion of this Court, this argument is also without any merit, as exercise of one of the choices by the plaintiff, would not exclude the alternative remedy. The decision relied upon by the learned counsel is not applicable in the present case, as in the said case, the plaintiff by way of a civil suit had challenged an order passed by Assessing Officer and against that, the plaintiff had already filed an appeal, therefore, in this background, the Hon'ble Supreme Court had applied the Doctrine of Election by holding that as plaintiff's appeal is pending, simultaneously on the same cause of action, the suit is not maintainable.

Apart from it, dismissal of previous suit under Order IX Rule 3 CPC does not amount to adjudication of case on merits, and if, on the basis of such an order, the subsequent suit, which otherwise is within limitation period, is not entertained, it would result in failure of justice. Such a rigid approach would mean shutting the doors of Courts for a party and scuttling the process of adjudication, without examining the merits of the case, therefore, the same would be totally unjustified.

A perusal of the impugned order dated 09.08.2022 (Annexure P-4) shows that the Civil Judge (Sr. Divn.), Yamuna Nagar at Jagadhari, has carefully examined the facts and circumstances of the case, while refusing to reject the plaint and the order does not suffer from any illegality or impropriety.

Resultantly, the revision petition fails and is dismissed.

01.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No