

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2449 of 2021

Date of Decision: 07.12.2022

St. Patricks Realty Private Limited

... Petitioner(s)

Versus

Bhupender Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. V.K.Jindal, Senior Advocate
with Mr. Gopal Soni, Mr. Akshay Jindal and
Ms. Priyanka Chaudhary, Advocates,
for the petitioner(s).

Mr. Daanish Mahajan and Mr. Jaskirat Singh, Advocates
for Mr. Prateek Mahajan, Advocate,
for the respondent No.10.

Mr. Harsh Vardhan, Assistant Advocate General, Haryana
and Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the respondent No.4 to 7.

Anil Kshetarpal, J.

1. Despite the service of notice, the plaintiffs (respondent No.1 to 3 herein) have not entered appearance.
2. The petitioner herein is the defendant No.1 in a suit filed by the plaintiff for grant of a decree of declaration with a consequential relief of permanent injunction and temporary injunction. The prayer clause of the plaint reads as under:-

“It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

N. Pass a decree for declaration that the revenue entry be corrected on the basis of Rojnameha Rapat No. 163 and as per

succession and also correct the mutation No. 6469 sanctioned on 28.12.1993, correct the entry regarding the actual owner in possession of the agricultural land in question and same be mutated in the name of the Plaintiffs and performa defendants also described in Para No. 1,2,3,&5,6 of the Plaint.

O. To pass a decree for declaration to the effect that after the correct of the revenue entry by the defendants no. 2, 3, and 4 as per law and rule returned the excess land in question in favour of the Plaintiffs and Performa defendants then same be recovered from the land in question sale by the defendants me 5 and 6 on the basis of wrong entry to the defendants No. 7 passed in favour of the Plaintiffs and against the defendants.

P. To pass a decree of Permanent Injunction against the defendants thereby restraining the defendants No. 7 not to interfere in the peaceful owner in possession of the land in question of Plaintiffs and Performa defendants on the basis illegally sanctioned the mutation No. 6469 on dated 28.12.1993 and alleged sale deed Vasika No. 1390 dated 30.06.2021. Till the final disposal of this case in the interests of justice Enquiry and fair play for the parties.

Q. To pass a decree for Mandatory Direction to the defendants no. 5 and 6 to refund the excess amount of Rs. 505000/- which was received from the defendants no. 8 on the basis of acquired some part of land in question and the defendants no. 5 and 6 excess amount received on the basis of alleged wrong mutation no. 6469 dated 28.12.1993 to the Plaintiffs as per documents and record on file in the interest of justice.

R. To pass a mandatory direction to the defendants No. 8 not to sanction the mutation regarding the house in question mention in the Para No. 2 of the Plaint on the basis of the forged/wrong mutation no. 6469 dated 28.12.1993 in favour of

the plaintiffs and against the defendants.

S. Any other Farther relief which this Hon'ble Court may deed fit and proper in the facts and circumstances may also be awarded in favour of the plaintiff and against the defendants in the interest of justice equity and fair play.”

3. An application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) with a prayer to reject the plaint has been dismissed by the trial Court vide impugned order dated 17.09.2021. Challenging the correctness of the aforesaid order, this revision petition has been filed.
4. It is the case of the petitioner that from the complete reading of the plaint, it is evident that the plaintiffs have no right, title or interest in the property and they are not entitled to the decree as prayed for by them.
5. In the plaint, the plaintiffs claim to be the heirs of Sh. Amrit Singh son of late Sh.Bhagwan Sahai.
6. At this stage, it would be appropriate to draw a pedigree table of *inter se* relationship between the parties.

Har Sahai										
Bhagwan Sahai (Died on 26.08.1985)							Ram Chander		Duli Chand (Died issueless and intestate on 11.07.1993)	
Sumer Singh	Amrit Singh						Shakuntla (D)	Ram Singh	Man Singh	
							(Defendants No.5 & 6)			
Lrs are proforma defendants	Bhupender (Plaintiff No.1)	Ramwati (Plaintiff No.2)	Manju Bala	Yogesh	Rani	Deepa	Rekha			
			Daughter of Amrit Singh (Plaintiff No.3)							

7. Late Sh.Bhagwan Sahai, one of the brothers, died in the year

1985, whereas the second brother Sh.Duli Chand died issueless and intestate on 11.07.1993. The property of Sh.Duli Chand was mutated in accordance with Section 9 of the Hindu Succession Act, 1956 (hereinafter referred to as “the 1956 Act”) and entry No.II of Class-II heirs enlisted in the Schedule attached to it. Out of the three brothers, only Sh.Ram Chander was alive at the time of death of Sh.Duli Chand as Sh.Bhagwan Sahai had died on 26.08.1985.

8. After the death of Sh. Ram Chander, his sons, namely Sh.Ram Singh and Sh. Mann Singh have sold the property vide registered sale deed dated 30.06.2021 to the petitioner (defendant No.7 in the suit). All these facts are explicitly stated in the plaint. However, the plaintiffs claim that they are also entitled to a share in the property left behind by late Sh.Duli Chand on the basis of intestate succession .

9. In case of death of a male Hindu, the intestate succession is broadly governed by Section 8, 9, 10 and 11 of the 1956 Act. The succession amongst the agnates and the cognates is governed by the subsequent provisions. In the absence of Class-I heirs, Class-II heirs are entitled to the property of the deceased. The father of the deceased is specified in Entry No.I or Category-I of the list of Class-II heirs. In Category-II or Strip-II, son’s daughter’s son, son’s daughter’s daughter, brother and sister have been specified. Section 9 of the 1956 Act provides that among the Class-II heirs, those in the first entry/category shall be preferred to those in the second entry and those in the second entry shall be preferable to those in the third entry and so on in succession. Section 9 and the list of Class-II heirs in the Schedule attached to the 1956 Act are extracted as under:-

Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

XXXX XXXX XXXX XXXX

Class II

- I. Father.
- II. (1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister.
- III. (1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter.
- IV. (1) Brother’s son, (2) sister’s son, (3) brother’s daughter, (4) sister’s daughter.
- V. Father’s father; father’s mother.
- VI. Father’s widow; brother’s widow.
- VII. Father’s brother; father’s sister.
- VIII. Mother’s father; mother’s mother. IX. Mother’s brother; mother’s sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.”

10. The plaintiffs do not fall in any of the categories mentioned in Class-II. They are claiming to be grand children of late Sh.Bhagwan Sahai who was the brother of late Sh.Duli Chand.

Keeping in view the aforesaid facts, it is evident that from the

reading of the plaint that the plaintiffs' claim has no basis. While exercising the powers under Order VII Rule 11 CPC, the Court is required to examine the case on a complete reading of the plaint. The Court should not shy away from rejecting the plaint if, as per the case set up by the plaintiffs, they cannot succeed. In support of his submissions, the learned senior counsel representing the petitioners relies upon the judgements in *T.Arivandandam v. T.V.Satyapal* (1977) 4 SCC 467, *Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee* (2012) 8 SCC 706, *Dahiben v. Arvindbhai Kalyanji Bhasushali* (2020) 7 SCC 366, *Rajendra Bajoria and Others v. Hemant Kumar Jalan and Others* 2021 SCCOnline SC 764 and *Azhar Hussain v. Rajiv Gandhi* (1986) Supp. SCC 312.

12. Keeping in view the aforesaid facts, the trial Court has erred in examining the plaint in a superficial manner. It is evident that the trial Court has failed to comprehend the facts which are explicitly stated in the plaint itself. Hence, the revision petition is allowed and the impugned order dated 17.09.2021 is set aside. The plaint of Civil Suit No. 268 of 2021, pending in the Court of the Civil Judge (Junior Division), Sohna, shall stand rejected. The trial Court is directed to consign the suit to the records.

(Anil Kshetarpal)
Judge

December 07, 2022
"DK"

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