

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

CR-3827-2022 (O&M)

Date of Decision : 05.12.2022

Raghbhir Singh (deceased) through his LRPetitioners

VERSUS

Darshna Devi & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikram Singh Punia, Advocate for the petitioner.

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ALKA SARIN, J. (Oral)

The present revision has been filed under Article 227 of the Constitution of India challenging the order dated 09.08.2022 whereby the application filed by the defendant-petitioner under Order 7 Rule 11 CPC has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-respondents filed a suit for declaration and permanent injunction under Sections 34, 37 and 38 of the Specific Relief Act, 1963 wherein the following prayers were made :

“It is, therefore, prayed that a decree for declaration declaring the partition proceedings including all proceedings from the date of passing exparte order till the partition and passing of Sanand Taksim and Kabja Karwai proceedings and mutations if any or any subsequent record prepared there upon as wrong, illegal, null, void, abinitio, nonest and inoperative and

not binding upon the rights of the plaintiff and proforma defendants and thus are liable to be aside including all Nakshas like KA, KHA, GA, mode of partition, Sanand Taksim etc. and the plaintiff and proforma defendants may kindly be declare as joint owner in possession as before as per their respective shares as per the revenue record attached with the plaint qua the suit property fully described in para No.1 of the plaint, be passed in favour of the plaintiff and against the defendants on the grounds stated above in the plaint.

xxxx”

During the pendency of the suit an application was filed by the defendant-petitioner for rejection of the plaint on the ground that the suit was barred under Section 158(2)(xvii) of the Punjab Land Revenue Act, 1887.

Learned counsel for the defendant-petitioner would contend that the jurisdiction of the Civil Court is completely barred by virtue of the provisions of Section 158(2)(xvii) of the Punjab Land Revenue Act, 1887. It is further the contention that the remedy lies before the Revenue Court and all the pleas can be raised by the plaintiff-respondents before the Revenue Court. In support of his contentions, learned counsel has relied upon the judgments passed by the Hon’ble Supreme Court in the cases of **Hardesh Ores Pvt. Ltd. Vs. M/s Hede and Company [2007 (5) SCC 614]**

and **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr. LRs & Ors. [2020 (7) SCC 366]**.

Heard.

It is trite that while deciding an application under Order 7 Rule 11 CPC, only the contents of the plaint have to be seen. The contents of the plaint reveal that fraud has been alleged while carrying out the partition proceedings. In Para 3 of the plaint, it has specifically been stated that all proceedings were conducted behind the back of the plaintiff-respondents. Details of the fraud as alleged have been given in the plaint. In the case of **Giani Ram & Ors. Vs Ompati & Ors. [2008(1) RCR (Civil) 619]** it has been held as under :

8. *It was claimed that partition proceedings cannot be called into question in view of Section 158(2) of the Act and in support of this contention reliance was placed on the judgment of this court in the case of Pritam Singh v. Jaskaur Singh, 1993(1) RRR 390 : 1992 PLJ 435 and in the case of Lala Ram v. The Financial Commissioner, Haryana, Chandigarh, 1992(1) RRR 231 : 1992(I) Revenue Law Reporter 85 wherein this Court has been pleased to lay down that the suit to challenge the order of Assistant Collector alleging that the Assistant Collector did not follow the procedure for deciding the question of title, and therefore, the order is illegal and without jurisdiction is barred under Section 158(2) of the Act. However, it may be noticed that before the*

learned Trial Court issue No.8 was framed regarding the jurisdiction of the civil court to try the suit. However, the appellant-defendants failed to show anything in this regard. Even before the learned lower appellate court no such plea as raised in this court was taken. Learned lower appellate court was pleased to reject the plea of partition by observing as under :

“20. As per my discussion above there is nothing to show that Om Pati was duly served in he partition proceeding. There is also no evidence that she has engaged Kuldeep Singh Advocate. There is no evidence on the file to show that she had executed power of attorney in favour of Tek Chand thereby authorising him to make statement on her behalf. Moreover, as mentioned above the compromise was not signed by all the parties even statement were not made by all the parties before the AC II Grade, Hansi. The compromise as well as statements made by some of the parties cannot bind the remaining parties, who had not singed the compromise and also not made statement in the court thereby admitting the factum of compromise. Hence I have no hesitation to hold that Sanad Taksi Ex.D4, mutation No.285 and subsequent proceeding thereby delivering the possession of

suit property on the basis of Sanad Taksim are illegal null and void.

21. The plaintiff-respondent No.1 was also not required to challenge the partition proceeding by way of filing of appeal or revision as the order is non-est in the eyes of law qua the plaintiff. The party adversely effected by an illegal, null and void order has a remedy to challenge the same in the civil court. Reliance can be placed upon Harbans Singh v. State of Punjab, 1978 PLJ 261. According to the partition proceeding, Sanad Taksim Ex.D.4, mutation No. 285 are illegal null and void and liable to be set aside. Suit land measuring 99 kanals and 11 marlas is accordingly jointly owned and possessed by the parties to the suit and cannot be said to have been partitioned in consequence of declaring the partition proceeding to be illegal null and void and setting aside the same.”

Thus, I find no force in the contentions raised by Mr. Sanjay Majithia, learned counsel appearing for the appellants to contend that the jurisdiction of the civil court was barred. The authorities relied upon by the learned counsel for the appellants, thus, have no application to the facts of the present case as in the present case a concurrent finding of fact has been

recorded that the plaintiff was not served in the partition proceedings and therefore, learned courts below were right in deciding the issue of jurisdiction in favour of the plaintiff-respondent.”

It has been held in the case of **State of Haryana Vs. Vinod Kumar [1986 (1) PLR 222]** that where procedure followed, as prescribed in the statute, has not been adhered to, the Civil Court would have jurisdiction.

In the case of **Dhruv Green Field Ltd. Vs. Hukam Singh & Ors. [2002 (6) SCC 416]** it has been laid down that the Civil Court would have jurisdiction where the order complained of is a nullity. It has been held as under :

“In the light of the above discussion, the following principles may be re- stated :

(1) If there is express provision in any Special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein lead to a conclusion in regard to exclusion of jurisdiction of a civil court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the

jurisdiction of the civil court is barred, If however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.”

The judgments relied upon by the learned counsel would have no applicability in the present case as the said two cases do not relate to complaints having been filed challenging the orders therein on the ground of fraud.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

December 05, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO