

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

(108)

CR-5050-2022
Date of Decision:-10.11.2022.

Shingara Ram and another

.....Petitioners

Versus

Inder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Ravi Dutt Sharma, Advocate for the petitioners.

ALOK JAIN, J.

The present revision petition raises challenge to the order dated 27.09.2022 whereby the application under Order 7 Rule 11 filed by the present petitioners being defendants in the suit has been dismissed.

Counsel for the petitioner has vehemently argued that the said suit is not maintainable on the ground that as per Section 158 (2) (vi) of the Punjab Land Revenue Act, 1887 (as applicable in Haryana), has the jurisdiction of the Civil Court has been barred. He further submits that even as per Section 25 of the Punjab Security of Land Tenure Act, 1953 (as applicable in Haryana) read with Section 26 of the Haryana Ceiling on Land Holding Act, 1972, there is a bar on the jurisdiction of the Civil Court to entertain or proceed with any matter under the said Act.

The counsel for the petitioner has relied upon the judgement passed by this Hon'ble Court in **2015 (2) PLR 613 titled Surat Singh and another Vs. Smt. Bhagwati and others**, to contend that the Civil Court does not have the jurisdiction in respect of matter where mutation has been challenged. Counsel for the petitioner submits that in the present case the

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respondent-plaintiff has made the following prayer:-

“That the plaintiffs pray that a decree to the effect that the impugned mutations nos.1768, 1770, 1771, 1773 to 1775, 1910, 1911, 1915 & 1916 and subsequent jamabandi for the year 2009-10, 2014-15 are illegal, null and void, ineffective, nonest, result of fraud and collusion and misrepresentation as well as mis-interpretation and not binding over the right of the plaintiffs and performa defendants with the consequential relief of permanent injunction restraining the defendants no.1 to 34 for ever from alienating the suit land mentioned in para no.1 of the plaint by way of sale, lease, mortgage, gift for release deed etc. and from creating any charge/encumbrance over the suit land from any bank or Govt. financial institutions or private persons, illegally and forcibly, nor or in future, be passed with costs in favour of the plaintiffs and performa defendants and against the defendants no.1 to 45.

Any other relief to which the plaintiffs are found entitled to may also be granted to them.”

He further contends that the issue of surplus land has already been mitigated between the parties whereby the High Court remanded the matter to the Financial Commissioner (Revenue), who passed an order in favour of the respondent-plaintiff and the said order of the FCR is under challenge before this Court and stands admitted.

After hearing the counsel for the petitioner, and perusing the record, coupled with the settled proposition of law that while deciding an application under Order 7 Rule 11 of CPC, the Court cannot go into the

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defence which the appellant might take in the written statement. The averments made in the plaint are to be considered and broadly the only parameters available for entertaining an application under Order 7 Rule 11 are where the suit appears from the statement in the plaint to be barred by any law. The Court while deciding such an application must have due regard only to the statements in the plaint and whether the suit is barred by any law must be determined from the averments in the plaint only. It is not open to decide the issue on the basis of any other material including the written statement in the case. The Hon'ble Supreme Court in the case of **"Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others"** had held the guiding principles for deciding an application under Order 7 Rule 11 CPC which are as under:-

"20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11 (d) can be summarized as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicate, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires

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consideration of the pleadings, issues and decision in the 'previous suit' such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

The petitioner has failed to demonstrate that the said application falls within the parameters as laid down by the Hon'ble Supreme Court and, therefore, the dismissal of the suit by exercising powers under Order 7 Rule 11, in the present case, would cause the travesty of justice. The petitioner has not been able to show any prima facie averment in the plaint which could lead to the dismissal of the suit and hence, there finding no infirmity in the well-reasoned order of the trial Court, the present petition being devoid of any merit is hereby dismissed.

No order as to costs.

(ALOK JAIN)
JUDGE

November 10, 2022.

sandeep

Whether speaking/reasoned:- Yes/No

Whether Reportable:- Yes/No