

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

CR-6119-2022 (O&M)

Date of decision: 22.12.2022

Reena Mehant Chela Shero Mai and others

...Petitioners

Versus

Shivani Mehant Chela Surjeet Mehant Chela Ram Murti Mehant

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.D. Sharma, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that plaintiff Shivani Mehant Chela Surjeet Mehant Chela Ram Murti Mehant had brought a suit for permanent injunction against defendants Reena Mehant Chela Shero Mai and others, contending that the parties are eunuchs/hijra performing traditional dancing and singing etc., within their areas falling within their traditional domain. The plaintiff is chela of Surjeet Mehant deceased, as such entitled to inherit estate of Surjeet Mehant, who had executed an affidavit in that regard on 23.06.2009. Earlier, a dispute had arisen between Surjeet Mehant Chela Ram Murti Mehant on one side and Fazla Mehant, Chela Mehant Ram Murti on other side regarding their traditional domain, which was compromised by way of affidavit on 14.12.2007. Again a

dispute had arisen between Surjeet Mehant on one side and Shero Mai Mehant on other side, which was also compromised on 10.05.2011 by way of affidavit/compromise. Surjeet Mehant also known as Rafik Khan had expired on 10.01.2016. The defendants have no right to perform traditional dancing, singing and doing entertaining activity within the area falling within traditional domain of the plaintiff but they are doing so illegally and forcibly, not listening the request of the plaintiff to desist from doing so. Feeling aggrieved, the plaintiff brought the suit in question, praying that defendants be restrained from performing traditional dancing, singing etc., on various occasions like birth of male child, marriage and reception in the area falling within traditional domain of the plaintiff.

On getting notice, the defendants appeared and filed an application under Order 7 Rule 11 CPC for rejection of the plaint mainly for the reason that in terms of Article 19 of the Constitution of India and other such like provisions, all the citizens have right to move freely throughout the territory of India to practice any profession or carry on any occupation, trade or business. The suit is clearly violative of Article 19 of the Constitution of India. The traditional domain mentioned in the plaint has not been defined clearly, the suit as such is not maintainable and is barred under Section 41 of the Specific Relief Act. The plaint is liable to be

rejected also.

The application was resisted on behalf of the plaintiff, and vide impugned order dt. 15.11.2022, the application was dismissed, leaving the defendants aggrieved and they have approached this Court by way of filing the present revision petition, praying that the same be accepted; the impugned order be set aside and application under Order 7 Rule 11 CPC filed by the defendants be accepted.

I have heard learned counsel for the revision petitioner besides going through the record and I find that the revision petition is without merit.

Para No.5 of the impugned order is quite relevant and is being reproduced as under for ready reference:-

5. The present suit has been filed by the plaintiff seeking permanent injunction against the defendants with the prayer that defendants be restrained from performing traditional dance, singing on various occasions in the area falling within the traditional domain of the plaintiff. In para No.5 of the plaint, it is mentioned that earlier a dispute arose between Surjeet Mehant Chela Ram Murti Mehant and Fazla Mehant, Chela Mehant Ram Murti regarding their traditional domain areas, which was compromised by way of affidavit on 14.12.2007 and both above persons executed their affidavits. In para No.6 of the plaint, it is mentioned that again a dispute arose between Surjeet Mehant, Chelam Ram Murti Mehant and Shero Mai Mehant, Chela Ram Murti Mehant regarding areas falling within the tradition domain areas, which was again

compromised on 10.05.2011 by way of affidavit that nobody will interfere into the areas of other person, but, despite that defendants violated the compromise dated 10.05.2011. From the pleadings of plaintiff, it appears that the present suit has been filed on the basis of compromise dated 10.05.2011. During the course of arguments, learned counsel for the defendants was asked whether compromise dated 10.05.2011 is admitted by the defendants or not, but, he only stated at bar that validity of this compromise is a matter of evidence. Since, compromise dated 10.05.2011, is neither denied or admitted by defendants and relief claimed by plaintiffs is based upon customary rights which means Article 19 of Constitution would not attract in the present case and plaintiff deserves an opportunity to prove the documents placed on file by him, by way of evidence.”

I find myself in agreement with the trial Court that the documents in the form of affidavit/compromise mentioned in the plaint are required to be proved by leading evidence since compromise dt. 10.05.2011 is neither admitted nor denied by the defendants and further the relief claimed by the plaintiff is based upon customary rights. The plaint cannot be rejected in such a manner as desired by the defendants. As far as judgment relied upon by learned counsel for the petitioner i.e. **Babi Khushra Vs. Ram Piari Khusra**, 2000(1) RCR (Civil) 343 by a single Judge of this Court that laid down the general principle of law, that no particular person or sect of persons can exercise exclusive right of begging but then the said judgment does not find application to the present case

which is based upon certain traditions and documents between various groups of hijras regarding their territory. The plaint cannot be rejected in a summary manner by putting into use the provisions of Order 7 Rule 11 CPC.

The impugned order does not appear to be suffering from any illegality or infirmity much less the same being perverse or arbitrary. I do not see any reason to interfere with the impugned order by exercising revisional jurisdiction. The revision petition is found to be without merit and is dismissed accordingly.

22.12.2022
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No