

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.220 of 2017 (O&M)

Date of Order:22.09.2023

Sunil Pillay

.Petitioner

Versus

United Church of Northern India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Garg, Advocate,
for the petitioner.

Ms. Mehak Sharma, Advocate, for
Mr. Sharwan Sehgal, Advocate
for respondent nos.1 and 2.

ANIL KSHETARPAL, J

1. The petitioner before this court is a defendant in a pending suit filed for grant of decree of declaration that the plaintiffs are the exclusive owners in possession of the suit property with a consequential relief of permanent injunction and for possession of the property.

2. For the purpose of court fees, the suit land was valued at Rs.1,00,000/- and consequently the amount of court fees was paid.

3. The defendant filed an application under Order VII Rule 11CPC to reject the plaint on two counts. The first ground in the application is that the suit has not been properly valued for the purpose of court fees and the second ground is that the suit is barred under Order II Rule 2 CPC.

4. The trial court has rejected the aforesaid application.

5. This revision petition has been filed to challenge the correctness of the order passed by the trial court on 30.11.2016, while dismissing the

defendant's application under Order VII Rule 11 CPC.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the petitioner contends that the value of the property is much more than Rs.1,00,000/- as the property in dispute is located in the heart of Ludhiana Town. He further submits that the suit filed by the plaintiff is barred under Order II Rule 2 CPC as the previous suit between the parties was decided on 09.09.2016.

8. The trial court has found that the suit property is the part of religious endowments and therefore no market value is to be fixed on a suit for recovery of possession while relying upon the judgment passed in **Gurdwar ad Baba Hundal vs. S.Shiv Singh, 1972 RLR 64.**

9. As regards the second objection, the court has held that the previous suit i.e United Church of Northern India Punjab synod vs. Mr. Avinash Kumar, was filed under Section 92 read with Order I Rule 8 CPC and, therefore, the rule of res-judicata is not applicable, whereas, the present suit has been filed for the grant of decree of declaration to the effect that the plaintiffs are the exclusive owners of the property and for permanent injunction. The question arising in both the suits is not directly and substantially the same.

10. This court has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

11. It is evident that the plaintiff (respondent) has paid the court fees on the amount of Rs.1,00,000/-. The petitioner (defendant) can request the trial court to frame a specific issue with regard to the deficiency in the court fee which can be decided by the court while deciding the main case

after the parties have been permitted to lead evidence.

12. At this stage, it would not be appropriate for the court to finally decide the question of value of the property only for the purpose of court fees.

13. As regards the second objection with regard to maintainability of the suit under Order II rule 2 CPC, it can be decided only if the pleadings in the previous suit are brought on record. The objection under Order II Rule 2 CPC can be sustained only if it is proved that the plaintiff while filing the first suit deliberately omitted to pray for the relief which was available to him and was arising from the same cause of action.

14. In these circumstances, under Order VII Rule 11 CPC, particularly when only the plaint is required to be examined, it would not be appropriate for the court to decide the objection with respect to maintainability of the suit under Order II rule 2 CPC.

15. Keeping in view the aforesaid facts and discussion, the revision petition is disposed of with the observation that the defendant(petitioner) shall have the liberty to request the trial court for framing issues on both the objections and lead evidence enabling the court to finally decide those issues along with the main suit.

16. All the pending miscellaneous applications, if any, are also disposed of.

September 22, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO