

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

117

2023:PHHC:090835

CR-6186-2018

Date of decision: 19.07.2023

JOGINDER SINGH

..Petitioner

Versus

PRITAM SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry Singla, Advocate
for the petitioner.

Mr. Ravish Bansal, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The dismissal of petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908, has prompted the petitioner to file the present revision petition. He wants that the plaint filed by respondent Sh. Pritam Singh Rupal should be rejected under Order VII Rule 11 at the threshold.
2. The caption of the plaint filed by the plaintiff-respondent reads as under:-

“A) Suit for declaration to the effect that the plaintiff is owner in possession as co-sharer of 1/15 share of land measuring 92 kanals 7 marlas, comprised in Khewat No. 309, Khatauni nos. 810 to 812, khasra nos. 53//5 min (6-0), 6/1 (2-4), 6/2 (5-7), 7 (7-11), 14 (7-11), 15/1 (4-4), 54//2 (7-8), 10 (7-4), 53//15/2 (3-7), 54//19/3 (2-7), 22 (8-18), 23 (6-0), 53//4 (8-0), 5 min (2-0), 54//1 (7-12), 18 (6-14), situated within the revenue limits of village Rajgarh Kube, Tehsil Talwandi Sabo, District Bathinda, as per jamabandi for the year 1992-93; AND the orders dated 18.3.1997, 13.5.1997, 24.6.1997 and 21.7.1997 passed in file no. 71 of 4.3.1997 passed by Hon' ble Assistant Collector Ist Grade, Talwandi Sabo, in partition application titled as 'Joginder Singh versus Wazir Singh & others' of village Rajgarh Kube, are illegal, inoperative, nonest, not binding upon the rights

of the plaintiff, without competency, without jurisdiction, against the principles of natural justice and the same are liable to be set aside and mutation no. 6439 dated 15.3.1999 sanctioned on the basis of alleged partition and/or other proceedings conducted under the abovesaid orders are also illegal, null & void, against law & facts, and are liable to be set aside as the defendants have no right, title or concern with the suit property, alongwith any other additional, alternative and consequential relief;

AND

B) Suit for permanent injunction restraining the defendants from dispossessing or interfering into the peaceful and exclusive possession of the plaintiff on khasra no. 23 (6-0), out of land measuring 92 kanals 7 marlas, as fully described in heading 'A' of the plaint, situated within the revenue limits of village Rajgarh Kube, Tehsil Talwandi Sabo, District Bathinda, under the garb of warrants of possession allegedly issued by Revenue Authorities on the basis of aforesaid orders dated 18.3.1997, 13.5.1997, 24.6.1997 and 21.7.1997 passed in file no. 71 of 4.3.1997 passed by Hon'ble Assistant Collector Ist Grade, Talwandi Sabo, in partition application titled as Joginder Singh versus Wazir Singh & others' of village Rajgarh Kube, illegally, forcibly, arbitrarily and anywise; alongwith any other additional, alternative and consequential relief."

3. The petitioner-defendant in the suit claims that the jurisdiction of the Civil Court is barred under Section 158(2) XVIII of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the '1887 Act'). It is submitted that an order of partition of the property passed by the competent authority is sought to be challenged by filing the civil suit, is not permissible. The learned trial Court has passed a detailed order while dismissing the application. It has been noticed that the plaintiff while filing the suit has stated that he is presently residing in Canada and he never resided in village Rajgarh Kube after 1989, whereas, he was proceeded ex parte by showing him to be residing at Village Rajgarh Kube. It is claimed that the partition proceedings are not binding on his rights particularly when he was never heard.

4. The learned counsel representing the petitioner while relying upon the judgment passed in *Harjinder Singh Vs. Kesar Singh and others, 2014(2) PLR 188*, contends that the plaint is required to be rejected in view of the bar of the jurisdiction of the Civil Court under Section 158 of the 1887 Act. He submits that the plaintiff has effective alternative remedy of going to the revenue authorities under Section 16 of the 1887 Act.

5. On the other hand, the learned counsel representing the respondents submits that in *Harjinder Singh's case (supra)*, the suit was filed to challenge the correctness of the mode of partition. He submits that the partition proceedings were already pending, whereas, in this case, the partition proceedings stands concluded in the year 1997.

6. This Court has analyzed the arguments of the learned counsel representing the parties.

7. The test which is required to be applied to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, is required to be construed very narrowly. Once a plaint is rejected, the suit comes to an end. In this situation unless the Court is in a position to record a categorical finding that the suit is not maintainable before the Civil Court, the plaint should not be rejected. Violation of principles of natural justice is one of the ground on which the suit in the Civil Court can be filed to challenge the orders passed by the authorities under the Act. In *Harjinder Singh's case (supra)*, the Court in para 5 recorded that the learned counsel representing the petitioner has failed to show any illegality or perversity in the orders of the revenue authority. The order passed by the trial Court rejecting the plaint was upheld after the Court satisfied itself that there is no illegality or

perversity in the orders of the revenue authority. Hence, the aforesaid judgment cannot be treated as a *ratio decidendi* to state that all the plaints filed to challenge the correctness of partition proceedings on violation of the procedure prescribed in the Act or principle of natural justice must be rejected at the threshold. Moreover, the plaintiff has also prayed for the decree of declaration that he is the owner in possession as a co-sharer to the extent of 1/15th share in the property. He has also prayed for the grant of the decree of permanent injunction.

8. In such circumstance, no ground is made out to interfere with the order passed by the Civil Court.

9. Dismissed.

10. Needless to observe that the observations made by this Court while dismissing the revision petition shall not be construed the final expression on the merits of the case.

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

July 19th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*