

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-941-2023

Date of Decision :10.02.2023

Daljinder Singh

...Petitioner

Versus

Chandan Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the petitioner.

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Harsimran Singh Sethi, J. (Oral)

The present petition has been filed challenging order dated 25.11.2022 (Annexure P-1) passed by the trial Court by which, the application filed by the petitioner under Order 7 Rule 11 of the CPC for dismissal of the suit has been rejected.

Learned Senior counsel for the petitioner argues that once the petitioner-defendant has purchased the share in land and became the co-sharer of the land in question vide registered sale deed No.5098 dated 04.07.2002, the petitioner stepped into the shoes of the owner hence, no decree as being claimed by the respondents-plaintiffs can be passed in favour of the respondents-plaintiffs and the suit filed by the respondents-plaintiffs is liable to be rejected. Learned Senior counsel submits that the sale deed No.5098 dated 04.07.2002 has been admitted by the plaintiff in the suit hence, the said sale deed need not to be proved at all therefore, the

order dated 25.11.2022 (Annexure P-1) passed by the trial Court rejecting the application filed by the petitioner under Order 7 Rule 11 of the CPC is liable to be dismissed and the application filed by the petitioner under Order 7 Rule 11 of the CPC is liable to be allowed so as to reject the plaint.

I have heard learned Senior counsel for the petitioner and have gone through the record with his able assistance.

First contention being raised by the learned Senior counsel for the petitioner is that sale deed No.5098 dated 04.07.2002 is an admitted document and hence, once the petitioner stepped into the shoes of the owner, he is entitled for all the benefits being a co-sharer of the suit land.

A bare perusal of the plaint, which can only be looked into at the time of deciding the application filed under order 7 Rule 11 of the CPC, clearly shows that sale deed No.5098 dated 04.07.2002 has not been admitted by the plaintiffs. The words used are “petitioner was threatening to dispossess him on the basis of some sale deed which was never shown to him”. Further word used qua sale deed are “alleged sale deed”, this averment in the plaint clearly go to show that the sale deed in question is yet to be proved by the petitioner-defendant so as to treat him to be a co-sharer in the suit property. Further from the averments made in para-5 and 6 of the plaint, it is clear that plaintiffs are claiming exclusive possession of the land in question to the exclusion of others.

Keeping in view the said averments which are mentioned in the plaint, order passed by the trial Court on the application filed under Order 7 Rule 11 of the CPC cannot be treated as illegal or arbitrary as the facts which are being relied by the petitioner are yet to be proved during the trial.

Learned Senior counsel for the petitioner further submits that the claim of the petitioner is covered by the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.3408-2019** titled as **T. Ramalingeswara Rao (deceased) through LRs and another vs. N. Madhava Rao and others** decided on 05.04.2019.

It may be noticed here, whether the petitioner has a valid sale deed in his favour to claim to be a co-sharer is yet to be proved on record by way of evidence. The suit will be decided on the basis of the evidence, which will be led by the parties during the course of trial. Whether ultimately the petitioner is able to prove the sale deed in question during the trial will depend upon the evidence which will come on record but for the purpose of deciding the application under Order 7 Rule 11 of the CPC, no other fact except the averments in the plaint are to be seen therefore, no relief can be granted to the petitioner at this stage qua the prayer raised under Order 7, Rule 11 of the CPC.

Keeping in view the above, no interference is called for by this Court with the impugned order and the present civil revision petition is accordingly dismissed.

February 10, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No