

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119+291

CR-1769-2023(O&M)
Date of decision: 06.11.2023

Prabhjeet Singh and Anr.

....Petitioners

Versus

Jagdish Singh Khera and Anr.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Vikas Kumar, Advocate for the petitioners.

Mr. Sachit Khurana, Advocate for respondent No.1.

AMARJOT BHATTI, J.

1. The petitioners/defendants No.1 and 2 have filed civil revision under Article 227 of the Constitution of India against order dated 14.12.2022 (Annexure P-4), passed by learned Civil Judge (Junior Division), Chandigarh vide which the application filed by the petitioners/defendants No.1 and 2 under Order 7 Rule 11 CPC for the rejection of plaint has been wrongly dismissed.

2. The learned counsel for the petitioners/defendants No.1 and 2 argued that Saravjeet Singh @ Sarabjeet Singh father of the present petitioners filed civil suit bearing No.12016 of 02.02.2013 in the Court of Civil Judge (Junior Division), Chandigarh for the ejectment of Sunil Kumar Gupta from two sheds along with recovery of rent and mesne profit. Said Sunil Kumar Gupta stopped making payment of rent. The plaintiff- Saravjeet

Singh @ Sarabjeet Singh served legal notice dated 03.12.2012 for termination of tenancy under Section 106 of Transfer of Property Act. The said suit filed by the father of the petitioners/defendants No.1 and 2 was contested by Sunil Kumar Gupta which was ultimately decreed vide judgment and decree dated 04.05.2015. Thereafter, Sunil Kumar Gupta filed Civil Appeal No.307 of 29.05.2015 which was dismissed vide judgment and decree dated 19.02.2016 passed by learned Additional District Judge, Chandigarh. Thereafter, he filed RSA No.1599 of 2016 in which the Hon'ble High Court refused to extend the interim order on account of non-compliance of the undertaking given by appellant-Sunil Kumar Gupta. Now the matter is pending before the Executing Court. Thereafter, Sunil Kumar Gupta in connivance with Ramesh Chander and Suresh Chander sons of Jagdish Chander got filed a suit for possession against himself i.e. Sunil Kumar Gupta without disclosing about the aforesaid litigation. In that case Sunil Kumar Gupta admitted the claim of Ramesh Chander and Suresh Chander which was ultimately decreed vide judgment and decree dated 01.08.2018. Saravjeet Singh @ Sarabjeet Singh came to know about this, he challenged the same in Civil Suit No.2517 of 2018 which is pending for adjudication. Thereafter, the present suit has been filed by Jagdish Singh Khara through power of attorney Sunil Kumar Gupta against the present petitioners. The copy of plaint is Annexure P-1. The present petitioners/defendants No.1 and 2 appeared and filed application under Order 7 Rule 11 CPC which is contested by the plaintiff and the said application has been declined by passing impugned order dated 14.12.2022. The copy of application, reply and impugned order are Annexure P-2 to Annexure P-4 respectively.

Learned counsel for the petitioners/defendants No.1 and 2 has pointed out that in the aforesaid plaint, the plaintiff did not disclose about the previous litigation which was initiated by their father. The present suit has been filed only to defeat the aforesaid judgment and decree in favour of Saravjeet Singh @ Sarabjeet Singh now represented through legal heirs i.e. present petitioners. The facts of the case were not rightly considered and the application has been wrongly declined by passing impugned order dated 14.12.2022. In fact the filing of present suit is misuse of the process of law, the suit has been filed by Jagdish Chander but contested by his power of attorney holder Sunil Kumar Gupta against whom the ejectment order was passed. In support of his arguments, learned counsel for the petitioners has relied upon the authority of the Hon'ble Apex Court in Civil Appeal No.5819-5822 of 2021 (arising out of SLP(C) Nos. 2779-2782 of 2019) titled as "***Rajendra Bajoria and Others vs. Hemant Kumar Jalan and Others***" "where while dealing with the provisions of Order 7 Rule 13 of CPC in that case in suit for declaration and perpetual injunction and mandatory injunction it was held that power is conferred on the Court to terminate civil action is a drastic one, and conditions enumerated under Order 7 Rule 11 of CPC are required to be strictly adhered to. It cast a duty upon the Court to determine whether plaint discloses a cause of action by scrutinizing averments in plaint, read in conjunction with documents relied upon or whether suit is barred by any law. It was held that in such a case it will be necessary to put an end to sham litigation so that further judicial time is not wasted". By relying upon this authority, learned counsel for the petitioners/defendants No.1 and 2 argued that the present suit filed by the plaintiff Jagdish Chander through his

power of attorney holder i.e. Sunil Kumar Gupta to defeat the previous judgment and decree in their favour vide which ejectment order has been passed against the said power of attorney holder. Therefore, the present civil revision may kindly be accepted by setting aside the impugned order dated 14.12.2022 (Annexure P-4) and the plaint filed in civil suit titled as ***“Jagdish Singh Khara vs. Prabhjeet Singh and others”*** may kindly be rejected.

3. On the other hand, the learned counsel for the respondent No.1 argued that earlier suit filed by Saravjeet Singh @ Sarabjeet Singh was against Sunil Kumar Gupta seeking ejectment from the premises in dispute i.e. two sheds as detailed therein, whereas the present suit has been filed by Jagdish Singh Khara claiming title in that property along with other property challenging the mutation and also seeking the relief of injunction as detailed therein. The application filed by the petitioners/defendants No.1 and 2 under Order 7 Rule 11 of CPC was rightly rejected by the learned trial Court by passing impugned order dated 14.12.2022 (Annexure P-4). It was rightly concluded that the grounds which are taken in application under Order 7 Rule 11 of CPC can be taken by the petitioners/defendants No.1 and 2 while filing their written statement to the plaint. The civil revision preferred by the present petitioners/defendants No.1 and 2 is without merits and the same may kindly be dismissed.

4. I have considered the arguments advanced before me and I have also gone through the pleadings. Order 7 Rule 11 CPC deals with the rejection of the plaint which reads as under:-

11. Rejection of plaint – The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails to comply with the provisions of rule 9: provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

The plaint can be rejected on any of the grounds as referred above. In order to appreciate application under Order 7 Rule 11 of CPC only the averments made in the plaint alone have to be seen and they have to be assumed to be correct and thereafter it is to be seen whether a particular case falls within the provisions of Order 7 Rule 11 of CPC or not. In the case in hand Jagdish Singh Khara through his power of attorney holder Sunil Kumar Gupta filed suit for declaration against Prabhjeet Singh, Jasjeet Singh (the present petitioners/defendants No.1 and 2) and Union of India through Sub Registrar, Sector 17, UT, Chandigarh. Instead of filing written statement, the present petitioners filed application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint. Copy of application is Annexure P-2. The present petitioners raised objection for not issuing notice as required under Sections 79 and 80 (2) of CPC. It was alleged that power of attorney is not embossed and registered in India. The suit was not properly valued for the

purpose of court fee and jurisdiction and true facts were concealed from the court regarding the previous litigation. It was pleaded that this suit was filed by the plaintiff through power of attorney holder to settle his personal score with the answering defendants through this proxy suit.

I have considered the aforesaid stand taken by the petitioners/defendants No.1 and 2. The contents of present petition indicate that Saravjeet Singh @ Sarabjeet Singh had filed civil suit seeking ejectment of Sunil Kumar Gupta which was decided in favour of Saravjeet Singh @ Sarabjeet Singh by the learned trial Court and the appeal preferred by the defendant in that case was dismissed. Thereafter, regular second appeal preferred by Sunil Kumar Gupta is pending. Since the interim order was not continued, therefore execution is pending. However, in the present suit Jagdish Singh Khera who is paternal uncle of the present petitioners/defendants No.1 and 2 filed suit for declaration claiming share in the property by challenging the mutations along with relief of injunction. The nature of litigation is totally different. It cannot be ignored that Jagdish Singh Khera filed this suit through his attorney who is none else Sunil Kumar Gupta against whom a decree was passed and regarding which execution proceedings are going on. The suit filed by the plaintiff straight way cannot be rejected under Order 7 Rule 11 of CPC. The stand taken by the present petitioners regarding non-service of notice to defendant No.3 or regarding validity of power of attorney or valuation of the suit can be raised in the written statement. At this stage, it cannot be said that the suit has been filed by Jagdish Singh Khera to settle scores with the present petitioners/defendants No.1 and 2 merely on the ground that Jagdish Singh

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Khera has given his power of attorney in favour of Sunil Kumar Gupta against whom the decree was passed and regarding which RSA is pending. Therefore, considering the aforesaid facts, I do not find any reason to interfere in the impugned order dated 14.12.2022 (Annexure P-4) and the same is accordingly upheld and the civil revision preferred by the present petitioners/defendants No.1 and 2 is declined.

Pending application(s), if any, stands disposed of accordingly.

06.11.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

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