

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

CR 1260/2022 (O&M)

Date of decision: 15.02.2023

Puran Singh

.....**Petitioner**

Vs.

Manpreet Kaur

.....**Respondent**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Navjot Singh, Advocate for the petitioner.
Mr.Kanish Jindal, Advocate with
Mr. Rishav Jain, Advocate for the respondent.

Nidhi Gupta, J.

Present revision petition has been filed by the petitioner/defendant against the order dated 6.1.2022 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division) Munak (Sangrur) whereby application filed by the petitioner/ defendant u/O 7 Rule 11 CPC, and Order 2 Rule 2 CPC has been dismissed.

Brief facts of the case are that the respondent/plaintiff filed civil suit dated 2.6.2021 with the following prayers: -

“A) Suit for declaration to the effect that the plaintiff is owner to the extent of 1/168 share (i.e. 1/2 share out of 1/84 share of defendant) out of land measuring 242 Kanals 7 marlas (particulars of land are detailed in copy of civil suit) and the plaintiff is also owner to the extent of 1/112 share (i.e. 1/2 share out of 1/56 share of defendant) out of land measuring 36 kanals 10 Marlas (particulars of land are detailed in copy of civil suit) situated at Village Chural Kalan Tehsil Lehragaga as per Jamabandi for the year 2015-16 and the defendant has no concern with the above said shares of plaintiff.

B) Suit for joint possession to the extent of 1/2 shares out of the shares of defendant out of the suit land detailed in the head note (A) of the plaint, on the basis of title.

C) Suit for permanent injunction to the effect that the defendant be restrained from changing the nature of the suit land by raising any type of construction and from transferring or alienating the shares of the plaintiff out of the land mentioned in the head note (A) of the plaint in any way to any other person illegally, wrongly and forcibly and on the basis of wrong revenue records”.

Petitioner filed an application (Annexure P-3) u/ O7 Rule 11 and u/ O2 Rule 2 CPC for rejection of the plaint pleading therein that the plaint did not disclose a cause of action. It is this application which has been dismissed by the Court below vide impugned order dated 6.1.2022. Hence, the present revision petition.

It is *inter alia* submitted by the learned counsel for the petitioner that there are various litigations pending between the parties, however, it is for the first time that the respondent/plaintiff has mentioned in the present suit that she is the adopted daughter of the petitioner/defendant whereas nowhere in the earlier litigation has she made this assertion or raised such a plea. It is further submitted that the respondent is filing piecemeal litigation and should claim all rights in one suit and therefore, the present suit was liable to be dismissed even u/ O 2 Rule 2 CPC. It is further submitted that the perusal of the plaint at Annexure P-2 does not disclose any cause of action and therefore, the said suit is manifestly vexatious and without any merit and liable to be rejected u/o 7 Rule 11 CPC. It is pointed out that the respondent has sought permission to file the present suit as an indigent person which is still pending before the trial court.

In response, it is submitted by the learned counsel for the respondent/plaintiff that a perusal of the application u/ O7 Rule 11 CPC filed

by the petitioner (Annexure P-1) shows that the requirements of Order 7 Rule 11 CPC are not met. Even no sub-clause u/ O7 Rule 11 CPC is mentioned in the said application and only vague and unsubstantiated assertions have been made therein. It is submitted that perusal of the plaint, in particular paras 5 and 7, thereof show that plaintiff has disclosed a triable cause of action. It is further submitted that prayer in the civil suit is for declaration, joint possession and permanent injunction and is not a simpliciter suit for declaration as stated by the learned counsel for the petitioner. It is submitted that even the assertion of the learned counsel to the effect that the respondent had not earlier pleaded that she is adopted daughter of the petitioner is incorrect as is evident from para 2 of the impugned order whereby the learned Trial Court has recorded that the respondent in earlier litigation has also stated that she is daughter of the petitioner. It is further submitted that Order 2 Rule 2 CPC is not applicable in the present case as the other litigation between the parties are for a different cause of action.

In rebuttal it is submitted by the learned counsel for the petitioner that primary prayer in the present civil suit is for declaration that the respondent be declared owner of the suit land to the extent of 1/168 share. It is reiterated that the present suit is barred u/ O2 Rule 2 CPC as the plaintiff is filing numerous litigation with similar prayer.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Three arguments raised on behalf of the petitioner are (a) respondent has pleaded for the first time that she is adopted daughter of the petitioner whereas in the earlier litigation respondent has nowhere mentioned this fact or raised this plea; (b) that the plaint discloses no cause of action and

therefore liable to be rejected u/o 7 Rule 11 CPC; and (c) present suit is barred u/ O2 Rule 2 CPC as the respondent/plaintiff is filing piece meal litigation whereas she should claim all her rights in one suit.

Perusal of the record shows that in reply to the petitioner's application u/ O7 Rule 11 CPC, respondent had filed reply stating therein that the respondent in earlier litigation also claimed to be daughter of the defendant and that she had been adopted as per customary rites and ceremonies by the petitioner when she was only 3-4 months old and since then she is living with the petitioner as his daughter. No replication thereto is stated to have been filed by the petitioner. Even nothing has been placed on record by the petitioner in support of his assertion. Therefore, this argument of the petitioner is rejected.

Further, Paras 5 and 6 of the plaint read as under: -

"5. That the possession of defendant over the shares of plaintiff is illegal and as of trespasser and the plaintiff is entitled to joint possession of the suit land to the extent of her shares as mentioned in the head note (A) of the plaint.

6. That the defendant has threatened that he will change the nature of suit land by raising any type of construction and will alienate or transfer the suit land including the shares of the plaintiff in any way to any other person illegally, wrongly and forcibly and on the basis of wrong revenue records, of which the defendant has no right and if he succeeded in his illegal motive then the plaintiff shall suffer an irreparable loss which shall not be compensated in terms of money".

Though the petitioner has not disclosed the specific sub-clause u/o 7 Rule 11 CPC under which he is seeking rejection of the plaint but it has been pleaded that the plaint discloses no cause of action and hence deserves to be rejected. In an application u/ O7 Rule 11 CPC nothing besides plaint can be

seen. In my view, the above pleadings disclose a triable cause of action, which has to be determined on basis of evidence led by the parties.

As regards the third contention that the present suit is barred by Order 2 Rule 2 CPC, there is nothing whatsoever, on record to substantiate this assertion. Just a bald assertion has been made that the present suit is barred u/ O2 Rule 2 CPC. Neither the application (Annexure P-3) filed by the petitioner discloses as to why the present suit is barred u/ O2 Rule 2 CPC, nor anything has been stated/ produced in the present revision petition either, to show why the present suit is liable to be rejected u/ O2 Rule 2 CPC. Except for a bald assertion that the petitioner is filing piece meal litigation and should claim all her rights in one suit, no material has been placed on record in submission of this contention.

In view of the above facts, present revision petition is, dismissed.

Application(s), if any, also stand disposed of.

(Nidhi Gupta)
Judge

15.02.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No