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

C.R NO. 2533 OF 2019 (O&M)

DATE OF DECISION: 16.03.2023

Kuldeep Malik**...Petitioner**

Versus

Saroj Devi and others**...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Sunny Bhardwaj, Advocate,
For the petitioner.

Mr. Brijender Kaushik, Advocate,
For respondent No.1.

Service of respondents No.2 to 12 dispensed with
Vide order dated 10.03.2022.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 22.10.2018 (Annexure P-4) passed by learned Civil Judge (Junior Division), Hansi, whereby application filed by defendant No.1/ petitioner herein, under Order 7 Rule 11 read with Section 151 CPC, was dismissed.

2. Succinct facts, first as pleaded in the instant petition.

2.1. Respondent No.1/plaintiff has filed a suit for declaration and permanent injunction against Baba Shyamban Education Society (hereinafter referred to as "Society") seeking to restrain pro forma respondents as well as petitioner (defendants) from interfering into day-to-day affairs of School run by the society and also prohibiting them from changing the nature of suit property.

2.2. Upon notice, petitioner/defendant No.1 appeared and filed an application under Order 7 Rule 11 CPC for rejection of plaint being barred by law. It was stated in the application that plaintiff has no right to file the suit in capacity of Secretary of Society as District Registrar has already been appointed administrator to run the affairs of society.

2.3 In reply (Annexure P-2) to said application, plaintiff took a stand that tenure of three years of the governing body of society expired on 19.02.2017 and thereafter, neither any elections were conducted nor *ad hoc* committee or administrator was appointed. It was further pleaded therein that dispute amongst the members of society is already pending before District Registrar, Hisar and vide order dated 19.07.2018, directions were issued by State Registrar of Societies to inquire into the matter.

3. Learned trial Court dismissed the application moved by defendant No.1/petitioner vide impugned order dated 22.10.2018 (Annexure P-4).Aggrieved, petitioner/defendant No.1 has preferred instant revision petition.

4. Heard learned counsels for the parties.

5. Order dated 22.10.2018 (Annexure P-4) assailed herein, is premised *inter alia* on the following reasoning:

“Xxx

After having heard the arguments advanced by the Ld. counsel for both the parties and after having gone through the documents placed on the file, this court is of the considered view that the present application is not maintainable keeping in view the provisions of Order VII Rule XI of CPC. Hon'ble Supreme Court has held in a case reported as Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others (S.C.) Law Finder Doc Id # 123033, holding in paragraph no.13, and 14 that judgment that where decision on an issue depends upon decision of a fact, it cannot be treated as preliminary issue. Specifically, when that issue relates to the jurisdiction of the court or it relates to a bar to the suit created by any law for the time being in force. Thus the issue of jurisdiction being mixed question of law and fact cannot be tried as preliminary issue. Moreover, in view of law laid down in a case reported as Smt. Rameshwati (supra) the court cannot go through any document

except the plaint itself at the time of deciding the application under Order 7 Rule 11 of CPC. From perusal of the averments made in the plaint there is no bar on filing of the present suit and I do agree with the submission of the Ld. counsel for the plaintiff that plaintiff got to know about the appointment of Administrator only on 01.05.2018 when the Administrator gave notice to her to hand over the charge. Soon after getting this she is moved this application under Order 6 Rule 17 of CPC. Otherwise also, from the nature of the plaint wherein the plaintiff has sought decree of declaration against the President of the Society who has allegedly transferred the land of the society in the name of trust by forging the documents and at this stage, plaintiff cannot be non-suited. Therefore, the present applications are dismissed being without merit.”

6. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

7. That apart, in the respondents’ reply Annexure P-2 to the petitioner’s application for rejection of the plaint, it has inter alia been stated that the tenure of the Administrator will start from the date he assumes charge of the society and that the appointed Administrator has not yet taken the charge of the Society and that its governing body is still working. Respondent No. 1, through whom the suit has been filed, is Secretary of the governing body of Society. These facts are not disputed. In these circumstances, it cannot be said, as contended, that respondent No. 1 had no locus standi to file the suit.

8. In my opinion, the petitioner’s application for rejection of the plaint has been rightly dismissed by the learned trial Court and no case is made out for interfering with the impugned order in exercise of the revisional jurisdiction of this Court.

9. There is, thus, no room for interference in the aforesaid valid reasons recorded by learned trial Court, with which I am in agreement. No grounds for interference are made out.

10. Dismissed.
11. Pending application(s), if any, shall also stand disposed of.

MARCH 16, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No