

CR-2418-2023 (O&M)

117

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2418-2023 (O&M)

Date of decision: April 24, 2023

Gurmeet Kaur and another

....Petitioners

versus

Balbiri (since deceased) and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. V.B. Godara, Advocate for petitioners.

ARUN MONGA, J. (ORAL)**CM-7124-CII-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petition herein is for setting aside impugned order dated 01.04.2023(Annexure P-5) passed by learned Additional District Judge, Kurukshetra whereby application under Order VII Rule 11 of Code of Civil Procedure, 1908 (for short 'CPC') filed by petitioner/defendants No.1 and 2 for directing plaintiffs to pay *ad valorem* Court fee, was dismissed.

2. The revision petition is premised on the averments that original plaintiff/ respondent No.1 Balbiri (since deceased) filed suit seeking declaration to the effect that sale deed No.28/1 dated 06.04.2004 in favour of defendants with respect to suit land and consequent revenue entries/ mutation in favour of defendants were illegal, null and void. Vide order dated 01.02.2016, original plaintiff was granted permission to file suit as indigent person. Suit was dismissed vide judgment/ decree dated 20.12.2016 (Annexure P-1).

2.1. Aggrieved, legal heirs of plaintiff filed appeal before learned Additional District Judge, Kurukshetra. Petitioners moved an application under Order VII Rule

CR-2418-2023 (O&M)

11 CPC for directing plaintiffs to pay *ad valorem* Court fee of Rs.16,675/- against sale deed amounting to Rs.2,75,000/-.

2.2. Vide impugned order dated 01.04.2023 (Annexure P-5), learned First Appellate Court dismissed the aforesaid application.

3. I have heard learned counsel for petitioners and gone through the record.

4. Order VII Rule 11 of CPC reads thus:-

“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 undervalued, and the plaintiff, on being required by the Court to 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 of the requisite stamp-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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.”

5. Impugned order dated 01.04.2023 (Annexure P-5) passed by learned Additional District Judge, Kurukshetra, is premised, *inter alia*, on the following reasoning:

“Record perused. Before learned trial court, the plaintiff Balbiri Devi, who is now represented by her L.Rs as appellants, was allowed to file the suit as an indigent person vide order dated 1.2.2016 and after her death, her L.Rs were brought on the record vide order dated 4.8.2011. The suit was dismissed on 20.12.2016 and the appeal has been filed by the L.Rs of Balbiri (plaintiff).

In the given facts and circumstances, the L.Rs of plaintiff Balbiri cannot be directed to affix ad-valorem court fee as per the value of the sale deed under challenge as the appeal is continuation of the suit. Accordingly, without going into the technicalities of law, the application is dismissed being without any merit though it is made clear that the consequences under Order 33 Rule 11 read with Order 44 CPC shall follow in case the indigent person (now represented by her L.Rs) fails.

CR-2418-2023 (O&M)

To come up on 11.4.2023 for arguments on the merits of the appeal.”

- 6. The appeal is the continuation of the suit of the plaintiff. Following her death, by a fiction of law, the LR's are only representing her.
- 7. There is no room for interference in the aforesaid valid reasons recorded by learned Appellate Court.
- 8. No material irregularity in law or procedure has been committed by learned Appellate Court, so as to exercise extraordinary revisional jurisdiction herein.
- 9. Dismissed.
- 10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 24, 2023
mahavir

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