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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2308-2023 (O&M)
Decided on : 19.04.2023

Gurmohinder Singh @ Gurminder Singh

....Petitioner

Versus

Bimla Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amit Kumar Jain, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 05.12.2022 passed by Ld. Civil Judge (Jr. Division), Dabwali, whereby application under Order VII Rule 11 CPC for rejection of plaint, was dismissed.

2. Succinct facts first, as pleaded in the revision.

2.1. Respondent No.1/plaintiff/landlord has filed a suit for possession by way of ejectment against present petitioner and proforma respondents from suit land on which a poultry farm is situated and for recovery of arrears of rent and *mesne* profits and for consequential relief restraining defendants No.1 & 2 from operating the poultry farm or subletting the same. It has been further averred that present petitioner and proforma respondents are in arrears of rent/lease money and have also sublet the suit property to defendant No.3, which is in violation of conditions of lease deed.

2.2. Present petitioner filed an application (Annexure P-2) under Order 7 Rule 11 CPC for rejection of plaint on the ground that Civil Court has no jurisdiction to try and entertain the present suit as the building of poultry farm was constructed in the year 1994-95 and is admittedly more than 10-year old and that the suit property is situated within the municipal limits of Dabwali and is urban area and as such remedy lies under Haryana Urban (Control of Rent & Eviction) Act, 1973 (*hereinafter referred to as 'Act of 1973'*) and not under the provisions of Transfer of Property Act. It has been further submitted that suit is filed within the lease period and is a premature suit. To say the least, the lease is not terminated by any notice under Section 106 of Transfer of Property Act and that suit is filed against a dead person.

2.3. Reply (Annexure P-3) to the application has been filed by respondent No.1/plaintiff denying all averments.

2.4. Vide impugned order dated 05.12.2022, learned Trial 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 05.12.2022 (Annexure P-5) passed by Ld. Trial Court, is premised, *inter alia*, on the following reasoning:

*“4. I have carefully perused the case file and heard the counsel for both the parties. It is argued by learned counsel for the applicant that the present suit is not maintainable. He has prayed that present application be allowed and plaint be rejected. Per Contra, learned counsel for the plaintiff/respondent argued that there is no valid ground to reject the plaint. He has prayed that present application be dismissed with costs being misuse of process of Court.
5. I have heard the rival contentions of both sides and perused the case file very carefully.*

6. It is well settled principle of law that for the purpose of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint have to be taken into consideration and for this, reliance rejection of the plaint and while deciding an application under Order 7 Rule 11 of CPC, only the averments made in the plaint have to be considered. As far as, the ground of death of defendant no.1 is concerned, it is relevant here to mention that said ground is not covered under the provisions of Order 7 Rule 11 of CPC. In the opinion of this Court, upon perusal of plaint of present suit, at this stage, no ground is made out to reject the same.

8. In view of above discussion, present application is hereby dismissed with no order as to costs. However, it is made clear that these observations shall have no bearing upon the merits of the case.”

6. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

7. Learned counsel for petitioner/defendant would argue that it is settled law of land that even after expiry of lease term, lessee becomes statutory tenant over the leased property and jurisdiction of Civil Court under Transfer of Property Act is impliedly barred and that lessee/tenant can be evicted only under the provisions of the Act of 1973. He would further argue that suit against a dead person itself makes the suit bad in the eyes of law. He would then argue that since the period of lease had not expired till filing of the suit i.e., 14.10.2020 and the lease was valid upto 16.11.2020 and the lease was not terminated by the owner of

suit property, present petitioner cannot be considered to be in unauthorized possession of the suit property.

7.1. Learned counsel for petitioner vehemently argues before me that in view of the candid pleadings of plaintiff that the suit property being under tenancy, the only remedy available to seek ejectment of petitioner/defendant lies under Section 13 of Act of 1973.

8. Having heard the arguments of learned counsel for petitioner and gone through the impugned order, I am of the view that since the issue of alleged lack of jurisdiction of the Court below goes to the root of the matter and a specific objection was also taken *qua* the same in the application under Order 7 Rule 11 CPC, yet Ld. Court below did not give any reason whatsoever to reject the said objection in the impugned order, and merely held that as far as remaining grounds of rejection of plaint are concerned, same are mixed questions of law and facts which can be decided only after taking evidence from both parties to the suit. I am of the opinion that this issue may be a question to be determined as a preliminary issue in the suit and therefore, may not be adjudicable on an application filed under Order 7 Rule 11 CPC. In the given circumstances, it seems appropriate to direct that after the issues are framed, an issue of Civil Courts jurisdiction be also framed by the Ld. Trial Court, the same be preliminary issues and only after returning the finding on the same, to proceed further with trial, depending upon its finding on that preliminary issue.

9. Revision stands disposed of in above terms.

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

(ARUN MONGA)
JUDGE

April 19, 2023
ashish

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