

131.

2023:PHHC:122353

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

CR-3229-2023 (O&M)

Date of decision: 18.08.2023

Parveen Bansal and another

.... Petitioners

Versus

Ram Niwas Aggarwal

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. V.P. Sangwan, Advocate, for the petitioners.

GURBIR SINGH, J.

The challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 15.12.2022 passed by learned Civil Judge (Senior Division), Bhiwani, vide which application filed by the petitioners/defendants (hereinafter referred to as “defendants”) under Order 7 Rule 11 of CPC read with Section 151 CPC seeking rejection of plaint, was dismissed.

Brief facts of the case are that the respondent-plaintiff (hereinafter referred to as “the plaintiff”) filed a suit for declaration to the effect that he is owner in possession of the suit property i.e. vacant land measuring 254 square yards, out of gair mumkin land measuring 10 kanals 17 marlas comprised in Khewat No.851/847, Khatoni No.977, Khasra No.727 (10-17) situated at Baba Nagar, Meham Gate, in the revenue estate of Bhiwani Lohar, Hadbast No.22, Tehsil and District Bhiwani. The said land

was given to the plaintiff by the defendants by way of family settlement dated 20.05.2022 (Annexure P-5). It is pleaded that the defendants have no concern with the same. The plaintiff is entitled to get his name incorporated in the revenue record. He has also prayed for permanent injunction restraining the defendants from alienating more than 1261 square yards out of Khasra No.727(10-17).

It is argued by learned counsel for the defendants that the family settlement, on the basis of which suit was filed, does not convey any title. The said family settlement is not a registered document. The plaintiff is not in possession of the suit property, so he is required to affix ad-valorem court fee. The suit has been cleverly drafted to avoid the payment of ad-valorem court fee by not claiming the relief of possession. The court requires a meaningful reading of the plaint as a whole to decide the application filed under Order 7 Rule 11 CPC. Reliance is placed upon the judgment of Hon'ble Supreme Court in ***K.Akbar Ali Versus K. Umar Khan and others, 2021(2) RCR (Civil) 287.***

It is further argued that the plaintiff has already transferred the land to Raman Aggarwal, who is a party to the settlement (Annexure P-5) and he has also submitted an affidavit dated 12.12.2022 (Annexure P-6) in this respect. If any condition of said family settlement is violated, then as per Part-1(a) and Part-1(b) of said settlement, the same is to be treated as cancelled. The plaintiff is required to seek a specific remedy as held in the judgment passed by this Court in ***Spectrum Life Medical Device Private***

Limited Versus EMC Super Specialty Hospital Private Limited, 2019(3) PLR 353 (P&H).

I have heard the submissions of learned counsel for the petitioners-defendants.

The specific case of the plaintiff is that he is owner in possession of the suit property and he has sought declaration for the same on the basis of family settlement. For deciding the application filed under Order 7 Rule 11 CPC, the court is required to take into consideration the pleadings in the plaint and not anything more. Merits of the case is not to be seen at this stage. Since the plaintiff himself is claiming to be in possession of the suit property and has not sought possession of the suit property, so he is not required to pay ad-valorem court fee. Whether plaintiff is entitled for declaration, it is to be seen on the merits of the case.

In ***K.Akbar Ali's case (supra)***, the claim was based on an agreement executed through power of attorney. It is held that it is open to the court to read the terms of the power of attorney along with the plaint. There was no clause in the power of attorney to sell the property or enter into agreement to sell. In ***Spectrum Life Medical Device Private Limited's case (supra)***, it is held that the suit for mandatory injunction was filed while avoiding the payment of court fee whereas the suit for recovery was maintainable. The ratio as laid down in these cases would not apply to the facts and circumstances of present case. The instant suit is not barred by any law. The plaintiff was not required to pay ad-valorem court fee. So, the order

passed by the learned trial Court is in accordance with law and this Court does not find any ground to interfere with the same.

The present revision petition stands dismissed accordingly.

(GURBIR SINGH)
JUDGE

August 18, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No