

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**116****CR No.3352 of 2023****Reserved on : 30.05.2023****Date of Decision: 04.07.2023**

Satwant Singh (deceased) through LRs

....Petitioners

VERSUS

Ranjit Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paritosh Vaid, Advocate for the petitioners.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the order dated 02.02.2023 whereby the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed by the defendant-petitioners herein has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for permanent injunction for restraining the defendant-petitioners, their agents, servants, attorneys or anybody else acting for and on their behalf from interfering in the peaceful and lawful possession of the plaintiff-respondents and/or dispossessing the plaintiff-respondents from the land measuring 06 acres 07 kanals 03 marlas having a frontage of about 2 acres, as described in the plaint in detail, situated at Pathankot GT Road, Village Noorpur, Tehsil and District Jalandhar. The defendant-petitioners filed an application for rejection of the plaint under Order VII Rule 11 CPC on the ground that the suit for permanent injunction was not maintainable as the plaintiff-respondents are not in possession of the suit property. Further ground taken was that the suit has been filed on the basis of an unregistered agreement to sell dated 01.11.2017 and further that the

plaintiff-respondents have not sought the relief of specific performance of the agreement to sell and since an efficacious remedy was available to them i.e. to file a suit for specific performance, as such, the suit was barred under Order VII Rule 11(D) CPC by virtue of Section 41(h) of the Specific Relief Act, 1963. A reply was filed to the said application by the plaintiff-respondents and vide the impugned order the said application was dismissed. Aggrieved by the same, the present revision petition has been filed.

3. Learned counsel for the defendant-petitioners would contend that since the plaintiff-respondents are not in possession and it is the defendant-petitioners who are in possession of the suit property, hence, the suit itself was not maintainable. It is further the argument that an unregistered agreement to sell has been relied upon by the plaintiff-respondents.

4. I have heard learned counsel for the defendant-petitioners.

5. It is trite that while deciding an application under Order VII Rule 11 CPC only the averments of the plaint are to be seen. The plaintiff-respondents have filed a suit for permanent injunction specifically averring therein that they are in possession and have sought an injunction restraining the defendant-petitioners from dispossessing them from the suit property. It is further averred that the development plan had been got approved and sanctioned *qua* the land measuring 06 acres 07 kanals 03 marlas as per possession taken, however, the area has fallen short by more than 01 acre, which materially affected the development of the colony and the entire project has been adversely affected. The argument of counsel for the defendant-petitioners that the defendant-petitioners are in possession and not the plaintiff-respondents, cannot be gone into at this stage since there is a

categoric averment in the plaint that the plaintiff-respondents are in possession of the suit property. Further, the argument that an alternate equally efficacious remedy is available to the plaintiff-respondents also cannot be gone into at the stage of deciding the application under Order VII Rule 11 CPC and would be a matter of evidence. The third argument regarding the reliance on an unregistered agreement to sell in the suit also cannot be a ground for rejection of the plaint under Order VII Rule 11 CPC. Learned counsel for the petitioners has been unable to convince this Court that there is any ground made out under Order VII Rule 11 CPC for rejection of the plaint. No other argument has been raised by the counsel for the defendant-petitioners.

6. In view of the above, the present revision petition, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.07.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO