

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

118

CR No.3570 of 2023

Date of Decision: 02.08.2023

RAMPHAL

.....*Petitioner*

Versus

MANOHAR SINGH

.....*Respondent*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Munish Gulati, Advocate
for the petitioner.

GURBIR SINGH, J (ORAL)

1 Challenge in this revision petition is to order dated 07.02.2023 passed by the learned Civil Judge (Jr. Divn.), Gurugram, whereby the application moved by petitioner/defendant under Order 7 Rule 11 CPC was dismissed.

2 The plaintiff/respondent filed a suit for declaration, partition with consequential relief of permanent injunction on the ground that plaintiff and defendant are the real brothers. Plaintiff and defendant inherited the property by way of Will in equal shares. Thereafter, mutual settlement/partition deed dated 04.02.2020 was entered into between the parties. As per said deed, the property which was agreed to be received by plaintiff/respondent i.e. plot measuring 329 sq. yards which was self acquired property of Ram Mehar-deceased, has fallen into litigation, with a person namely Banwari Lal and others, who have filed counter claim against the plaintiff/respondent claiming a decree that sale deed bearing No.7366 dated 17.11.1988 is illegal. He further submits that in fact the partition of the

property of deceased Ram Mehar has not attained the finality. The understanding/partition dated 04.02.2020 has not been acted upon because one part of the property has become subject matter of litigation and until the same is cleared from the litigation all of the property would be joint property. The petitioner filed the application under Order 7 Rule 11 CPC for rejection of plaint being not maintainable which has been dismissed by the learned Civil Judge (Jr. Divn.), Gurugram on 07.02.2023.

3 Learned counsel for the petitioner submits that the partition/understanding dated 04.02.2020 was recorded on the stamp paper. No cause of action accrued to the plaintiff to file the suit. He relies on case ‘Coln. Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar Vs. Krishan Nandan Singh and Another’. The settlement has been challenged after two years.

4 I have heard submission made by learned counsel for the petitioner.

5 The challenge in the plaint is that understanding/partition deed dated 04.02.2020 has not attained finality *inter alia* on the ground that part of the property which has been given to the plaintiff/respondent has fallen into litigation. Whether settlement dated 04.02.2020 had taken place between the parties and attained finality or not can only be decided on the basis of evidence to be led in this case. The plaintiff has right to challenge the partition deed and same has been challenged within a period of limitation. The cause of action has accrued to the plaintiff to file suit. Another averment of counsel for the petitioner is that the plaintiff has sought partial partition and has not included other properties whether suit is for partial partition or not. It is also a question of evidence. Since, cause of

action accrued to the plaintiff and he accordingly, filed a suit. The impugned order is accordance with law and there is no ground to reject the plaint.

6 Accordingly, the present petition stands dismissed.

02.08.2023
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(GURBIR SINGH)
JUDGE

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