

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.123

Case No. : C.R.No.4175 of 2023

Date of Decision : July 27, 2023

Dalvir Kaur

.... Petitioner

vs.

Shobha Rani and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. G. S. Brar, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 06.01.2023 passed by learned Civil Judge (Junior Division), Jalandhar (Annexure P-1), vide which the application filed by the petitioner/defendant no.3 (hereinafter referred to as – defendant no.3) under Order VII Rule 11 CPC, for rejection of plaint, has been dismissed.

2. The brief facts of the case are that Shobha Rani (plaintiff) filed a suit against Veena Rani (defendant no.1) and Sarwan Singh (defendant no.2) for permanent injunction. Dalvir Kaur (petitioner herein) filed an application under Order 1 Rule 10 CPC. She was ordered to be impleaded as defendant no.3. Parties are being referred as per the original plaint.

3. Learned counsel for the petitioner/defendant no.3 submits that suit was filed against dead person. Defendant no.1 Veena Rani had already

died on 04.06.2018, prior to filing of the suit. Defendant no.3 is owner of the suit property on the basis of sale deed dated 24.10.2017. The plaintiff has got no right, title or interest in the suit property.

3. The petitioner moved an application (Annexure P-9) for rejection of plaint which was dismissed vide the impugned order. It was submitted in the application that the suit was not maintainable against a dead person. In addition to that, the property had already been sold in favour of the petitioner, so the order passed by the Trial Court is against law.

4. Heard.

5. A suit simplicitor for permanent injunction was filed by Shobha Rani – plaintiff that she purchased the property vide agreement dated 09.04.2014 for consideration from defendant no.1 through her General Power of Attorney and she became owner in possession of the suit property. The learned Trial Court, in its impugned order, has held that plaintiff has already withdrawn the suit, filed against defendant no.1, by making a statement. In the plaint, it is specific case of the plaintiff that the possession of the suit property was given to her at the time of execution of agreement to sell. The petitioner/defendant no.3 is also transferee of suit from defendant no.1, as per sale deed dated 24.10.2017. It is a question of evidence if plaintiff came in possession on the basis of agreement to sell or defendant no.3 was given possession thereafter by the vendor. At the time of deciding the application under Order VII Rule 11 CPC, the averments made in the plaint are to be seen and respondent no.1 is prima facie proved to be in possession of the suit property. A person having established possession has got right to protect his/her possession if the suit is filed on the ground that

the other party was threatening to dispossess him/her from the suit property except in due course of law. So, from the averments of the plaint, it cannot be said that no cause of action was there to file the suit.

6. Learned Trial Court has passed the impugned order in accordance with law. There is no merit in the present revision petition and the same is hereby dismissed in limine.

7. Nothing stated herein above shall have any effect on the merits of the case. The observations recorded above are only for the purpose of deciding the present revision petition.

8. Pending applications, if any, shall stand disposed of along with this judgment.

July 27, 2023
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.