

2023:PHHC:146111
**139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3478-2022 (O&M)
Date of decision: 16.11.2023

Kashmiri Lal

....Petitioner

Versus

Nathu Ram (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S.Mehndiratta, Advocate for the petitioner

Mr.Rajesh Kumar Bhogel, Advocate for
respondent no.1 (i) (ii) (iii)

ANIL KSHETARPAL, J (Oral)

1. Sh.Nathu Ram (now deceased) has filed two different suits. The first one was filed for the grant of the decree of declaration that he is an owner in possession, on the basis of a 'total payment agreement to sell' executed on 24.08.2013. The aforesaid suit is pending. During the pendency of the first suit, Sh.Nathu Ram filed the subsequent suit for grant of the decree of the specific performance of the same agreement to sell i.e 24.08.2013. The defendant (petitioner) filed an application under Section 10, Order VII Rule 11 and Order VII Rule 1(j) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to reject the plaint. The trial court has dismissed the application. The correctness of the aforesaid order is challenged in this revision petition.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. Section 10 CPC provides that no court shall proceed with the trial of any suit, in which, the matter in issue, is also directly and substantially in issue in a previously instituted suit between the same parties. The expression '*matter in issue*' is not to be interpreted in relation to the suit property, however, it must be interpreted in relation to the subject matter of the suit. In the first suit, the plaintiff has not sought a decree for specific performance, which is the appropriate relief. The maintainability of the suit for the declaration that the plaintiff has become an owner on the basis of 'total payment agreement' is a debatable issue, however, this Court shall not annotate on the said issue.

3. The provisions of Order VII Rule 11 CPC were also invoked on the ground that a previous suit is pending. This is not one of the grounds for rejection of the plaint as per Order VII Rule 11 CPC.

4. As regards the next objection, it may be noted here that Order VII Rule 1(j) CPC has been added by the amendment dated 15.03.1991, applicable to the States of Punjab, Haryana and Chandigarh. It mandates that the plaintiff, while filing the suit, shall disclose any previous litigation pending between the same parties. However, it is nowhere provided that on failure of such disclosure, the suit will be liable to be dismissed. It will not be appropriate

for the Court to reject the plaint at the threshold only on this ground. Reliance in this regard can be placed on the decision rendered by this Court in RSA-30-2008 titled as '**Omwati vs. State of Haryana and others**' decided on 06.03.2018 wherein the following question of law arose before the Court for adjudication:-

“(iii) What is the affect of non-disclosure of earlier writ petition pending between the parties, while filing a suit particularly when such fact has been disclosed, while filing the replication?”

and it was held as under:-

“Clause (j) was added vide amendment dated 15.3.1991. Order 7 Rule 1 CPC provides the particulars to be contained in the plaint. Clause (j) provides that the plaintiff should disclose in the plaint that no suit between the same parties or between the parties under whome they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so with what results. Order 7 Rule 1 CPC does not provide that in absence of such disclosure or as a result of non-disclosure, the plaint should be liable to be rejected or the suit would be required to be dismissed.”

5. With these observations, the present petition is dismissed.

6. All the pending miscellaneous applications, if any, are also disposed of.

16.11.2023
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE