

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

Civil Revision No. 5220 of 2019 (O&M)

Date of Decision: 22.11.2023

Vijay Laxmi & Anr.

...Petitioners

Versus

Tej Ram & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Amit Jain, Advocate
for the petitioners.**

None for respondent No.1.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/ defendants No.15 and 16 seeking setting aside of order dated 11.07.2019 (Annexure P-4) passed by the Court of Civil Judge(Jr.Divn.), Gurugram whereby an application filed by the petitioners under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed.

2. The brief facts of the case are that respondent No.1 Tejram has filed suit for possession by way of partition of the suit property. On receipt of notice of the suit, petitioners/ defendants appeared in the trial Court and filed an application (Annexure P-2) under Order 7 Rule 11 CPC. The same was contested by respondent No.1 and after hearing both the parties, the said application was dismissed by the learned trial Court vide impugned order (Annexure P-4). Being aggrieved, the petitioners have filed the present revision petition.

3. Today, there is no representation on behalf of respondent No.1.

4. I have heard the counsel for the petitioners.

5. The counsel for the petitioners while assailing the impugned order, *inter alia*, submits that there was no cause of action for respondent No.1 to file the suit for partition of the disputed property. The counsel for the petitioners while referring to plaint (Annexure P-1) submits that from the perusal of the same it could be easily made out that the suit property is already partitioned and its nature has been changed from agriculture to non-agriculture and is being used for residential purposes and the parties to the suit have constructed their houses and are residing therein. The counsel for the petitioners further submits that previously the petitioners filed suit for permanent injunction against respondent No.1 and other persons which was decided in favour of the petitioners vide judgment dated 25.10.2017 (Annexure P-5) wherein the Civil Court specifically observed that as the version of the defendants to the effect that suit land is joint and the suit for permanent injunction is not maintainable is concerned, the defendants have not led any evidence to prove that land is joint. The counsel for the petitioners further submits that the appeal filed against the said judgment by respondent No.1 was dismissed in default on 19.10.2021. The counsel for the petitioners further submits that the present suit has been filed by respondent No.1 in order to counter-blast the aforesaid judgment (Annexure P-5). The counsel for the petitioners further submits that the plaint of the present suit does not disclose any cause of action and the suit is barred by law as the Civil Court has already given specific findings with regard to the partition of the suit property. In support of his contentions, the counsel for the petitioners has relied upon decision of this Court in **Prem Kumar Vs. BBF Industries Ltd. 2018(4) RCR (Civil) 980**.

6. I have considered the submissions made by counsel for the petitioners.

7. It is settled position of law that power under Order 7 Rule 11 CPC could be exercised by the Court at any stage of the suit and the plaint is to be rejected if conditions enumerated in said statutory provision are fulfilled and if on entire reading of plaint, it is found that the suit is manifestly frivolous and is not disclosing any right to sue, the Court should invoke its jurisdiction under Order 7 Rule 11 CPC. In this regard, reference is made to **Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, 2017(3) RCR (Civil) 64.**

8. The case law referred by counsel for the petitioners is of no help as the said case was decided on merits and it is settled position of law that for purpose of deciding application under Order 7 Rule 11 CPC only averments stated in the plaint are to be examined and merits and demerits of the matter cannot be gone into. However, the Court has to keep in its mind that remedy under Order 7 Rule 11 CPC is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold without proceeding further to record the evidence, if it is satisfied that the suit is covered under the conditions provided under Order 7 Rule 11 CPC.

9. I have gone through the judgment (Annexure P-5). The same has been passed by the Civil Court in a suit for permanent injunction restraining the other party from occupying passage marked as ABCD by raising construction therein. In the said civil suit, there was no dispute of title and even otherwise the entire suit property was not subject matter in the previous suit and further no specific findings were recorded by the Civil Court in judgment (Annexure P-5) with regard to the partition of the suit property involved in the present case.

10. Only the averments made in the plaint are to be dealt with for the purpose of application filed under Order 7 Rule 11 CPC. From the perusal of plaint, Annexure P-1 it is evident that respondent No.1 has specifically pleaded that the land in question has not been partitioned by meets and bounds and the same is still joint between the co-owners and there remains dispute between the co-owners regarding possession of the land in question. In the plaint, it has also been averred that the suit property is *gair mumkin*. It being so, the Civil Court is having jurisdiction to entertain and try the suit for partition of the suit property filed by respondent No.1. It could also be made out that the plaint discloses specific cause of action.

11. For the foregoing reasons, the petitioners have failed to point out any illegality or irregularity in the impugned order. Thus, no ground for interference is made out in the present petition. Consequently, the present revision petition is hereby dismissed without expressing any opinion on the merits of the case. The parties are directed to appear before the learned trial Court for further proceedings on the date already fixed in the suit.

22.11.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No