

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.4156 of 2022 (O&M)
Date of Order:12.09.2023

Vicky Sharma

.Petitioner

Versus

Dr. Ranbir Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: **Mr. Prateek Sodhi, Advocate**
 for the petitioner.

Mr. Puneet Sharma, Advocate
 for the respondents.

ANIL KSHETARPAL, J

1. The correctness of the trial court to reject the plaint at the threshold in exercise of powers under Order VII Rule 11 CPC has been challenged by the defendants in this revision petition.
2. The rejection of the plaint is sought on the ground that the subsequent suit as same cause of action is barred under Order II Rule 2 CPC. It has been projected that the parties in the previous round of litigation entered into a settlement and the following cases were withdrawn:-

Sr.No.	Case title and particulars	Remarks
1.	Dr. Ranbir Singh vs Ajit Singh and others Case No.42/17/CS/704/17	Statement of withdrawal dated May 3, 2018 (Annexure P/8). Order of withdrawal dated May 3, 2018 (Annexure P/9)
2.	Dr. Ranbir Singh vs Ajaypal Singh Case No.102/17	Order of withdrawal dated May 3, 2018 (Annexure P/10)
3.	Sahebzaad Singh Behniwal vs. Shri Ajit Singh and others	Order of withdrawal dated May 3, 2018 (Annexure P/11).

	Case No.3/17	Statement of withdrawal dated May 3, 2018 (Annexure P/12).
4.	Dr. Ranbir Singh vs. Subhash Sharma and others Case No.27/2017	Order of withdrawal dated May 3, 2018 (Annexure P/13).
5.	Dr. Ranbir Singh vs. Ajit Singh and another Case No.EP 2/2017	Statement of withdrawal dated May 22, 2018 (Annexure P/14). Order of withdrawal dated May 22, 2018 (Annexure P/15)
6.	Dr. Ranbir Singh vs. Punjab Kesari Newspaper and others. Case No.20/2017	Order of withdrawal dated May 3, 2018 (Annexure P/16) Order of withdrawal dated May 3, 2018 (Annexure P/17).

3. It is submitted that the subject matter of the previous suit i.e. the property is the same as is the property in the subsequent suit. Hence, the suit is barred under Order XXIII Rule 1(3) CPC. It is further contended that the plaint does not disclose the cause of action and therefore the plaint is liable to be rejected at the threshold.

4. As already noticed, before the trial court, the rejection of the plaint was sought under Order II Rule 2 CPC which has not been pressed before this court.

5. The learned counsel representing the petitioner submits that the petitioner (defendant in the suit) filed an application while specifically referring to Order XXIII Rule 1(3) CPC.

6. Be that as it may

7. It may be noted here that a copy of the subsequent suit which is now pending before the trial court has been annexed as Annexure P-1. In

this suit, the plaintiff has sought a decree of declaration to the effect that the plaintiff is a co-sharer in the joint possession to the extent of 23 kanals and 9 marlas being $\frac{1}{2}$ share share of land measuring 46 kanals and 18 marlas and the two exchange deeds dated 03.05.2018, allegedly executed in favour of the defendants are illegal, null and void apart from being vitiated by duress as signature and thumb impression of the plaintiff on these documents were obtained by defendant no.2 when the plaintiff and his wife were in judicial custody in a false case. Thus, the subject matter of the present suit is the two exchange deeds only, that were executed on 03.05.2018.

8. At this stage, the learned counsel representing the petitioner submits that there is only one exchange deed.

9. Be that as it may.

10. Order XXIII Rule 1(3) CPC bars institution of a fresh suit if the subject matter of the suit was same in a previously instituted suit. The argument of the learned counsel representing the petitioner that the subject matter has a reference to the property is wholly erroneous. The subject matter of the suit has a reference to the dispute involved in the suit and not the property which is in dispute. Admittedly, in the previous suit filed by the parties, the exchange deeds dated 03.05.2018 were not the subject matter of the dispute. In fact, all the suits were withdrawn on 03.05.2018 and 22.05.2018.

11. As regards the objection with regard to the cause of action, it may be noted that the plaintiff in paragraph 15 of the plaint has asserted as under:-

“That the cause of action arose in favour of the plaintiff and against the defendants on 03.05.2018 when the

defendant no.2 and his accomplices illegally and forcibly under threat obtained signatures/thumb impressions of the plaintiff, his wife and his son on the above noted two alleged exchange deeds and compromise deed dated 03.05.2018. Secondly when the defendants refused to accept the genuine request of the plaintiff to admit the above noted documents to be null and void and admit the genuine claim of the plaintiff over the suit land and finally yesterday when the defendants finally refused to admit genuine title/claim of the plaintiff over the suit land and threatened to illegally and forcibly change the nature of the suit land, raise construction on the specific valuable portions of the suit land and also to alienate/transfer the specific portions of the suit land by carving out plots out the suit land to third parties without getting the suit land partitioned from the court of competent jurisdiction. The cause of action arises to the plaintiff with every passing movement in view of the constant threats/attempts of the defendants to change the nature of the suit land and to alienate/transfer the specific portions of the suit land by way of plots to third persons without the partition of the suit land by court of competent jurisdiction.”

12. Moreover, the bundle of facts resulting in filing of the suit constitutes the cause of action and the court is required to permit the parties to lead evidence in order to arrive at a conclusion that the cause of action for filing the suit exists or not?

13. The rejection of a plaint under Order VII Rule 11 CPC can be resorted to only if the court comes to a definite conclusion that the subsequent suit is barred under any of the clauses mentioned in Order VII Rule 11 CPC. In case of slight doubt, the court should desist from rejecting the plaint lest the meritorious case is thrown out at the threshold.

14. The learned counsel representing the petitioner relies upon the judgment passed in **Ramisetty Venkatanna and another vs. Nasyam Jamal Saheb and others, (Civil Appeal No.2717 of 2023, decided on 28.04.2023).**

15. This court has carefully examined the judgment. In that case, the Hon'ble Supreme Court came to a definite conclusion that the subsequent suit is barred and a clever drafting shall not make the subsequent suit permissible. However, as already noticed, in this case, the main challenge is to the correctness of exchange deed which was not the subject matter of the previous suit.

16. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

17. Dismissed.

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

September 12, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO