

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-2973-2021

Date of decision: 31.01.2023

Hardeep Kaur & Others

...Petitioner(s)

Vs.

Ravinder Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naveen Batra, Advocate for the petitioners.

Ms. Ritu Punj, Advocate for the respondent No.1/plaintiff.

NIDHI GUPTA, J.

Present petition has been filed seeking setting aside of order dated 26.10.2021 (Annexure P5) whereby application filed by the petitioners/defendants under Order 7 Rule 11 CPC has been dismissed.

Brief facts of the case are that respondent No.1/plaintiff filed a Suit seeking declaration to the effect that she is co-sharer in the suit property, being legal heir of deceased Gurbhag Singh who was her father-in-law, as she is the legally wedded wife of Harjit Singh son of Gurbhag Singh. It was pleaded that therefore, plaintiff/respondent no. 1 was entitled to her share in the suit property which is joint Hindu family coparcenary property. Respondent No.1/plaintiff sought further declaration to the effect that the Will dated 07.11.2008 registered on 10.11.2008 executed by Gurbhag Singh in favour of defendants No.2 to 7 was wrong, illegal, forged and fabricated document and that Gurbhag Singh was the owner of the suit property and therefore, after his death, plaintiff being legally wedded wife

of defendant No.1-Harjit Singh son of Gurbhag Singh, was a successor to the property in equal share.

It is submitted by learned counsel for the petitioners/defendants that the petitioners are the daughters and widow/defendants No.5, 3 and 2 respectively of Gurbhag Singh. It is submitted that respondent No.1 being daughter-in-law of deceased-Gurbhag Singh cannot be declared to be a coparcener in the property of her father-in-law when her husband is still alive. It is submitted that respondent No.1/plaintiff has filed the Suit claiming her right in the property of Gurbhag Singh while concealing the fact that her husband Harjit Singh is still alive. It is stated that respondent No.1/plaintiff is estranged from her husband Harjit Singh and has therefore filed this wholly malicious and vexatious Suit against the petitioners solely with the intent of harassing them. It is also submitted that as per Hindu Succession Act, respondent No.1/plaintiff is neither a Class-I nor even Class-II heir.

It is further submitted that it is apparent on record that respondent No.1 has no claim in the property of Gurbhag Singh and she has no vested right in the suit property, and therefore, she has no locus standi to file present Suit. It is submitted that this being so, the learned trial Court is in patent error in dismissing petitioners' application under Order 7 Rule 11 CPC.

In response, it is submitted by learned counsel for respondent No.1/plaintiff that she has filed the Suit not just for declaration regarding ownership of the suit property, but has also sought declaration in regard to

the alleged Will dated 07.11.2008 alleged to have been executed by Gurbhag Singh in favour of defendants No.2 to 7, as void ab initio. It is submitted that therefore, there is no error in the impugned order.

In rebuttal, learned counsel for the petitioners submits that once the plaintiff has no locus to file the Suit whether there is a Will or not, she has no right to challenge it because even otherwise, she has no right in the suit property even if Gurbhag Singh had died intestate. It is submitted that therefore, the impugned order deserves to be set aside.

No other argument is made on behalf of the parties.

I have heard learned counsel for the parties.

It is an admitted fact on record that by way of Civil Suit (Annexure P1) respondent No.1/plaintiff has sought declaration to the effect that she is co-owner and co-sharer of the suit land as described in the headnote of the plaint; and further declaration has been sought that Will dated 07.11.2008 allegedly executed by Gurbhag Singh registered on 10.11.2008 in favour of defendants No.2 to 7 is a forged and fabricated document. It is an established position in law that in considering an application under Order 7 Rule 11(d) CPC for rejection of plaint, only contents of the plaint have to be seen. In the present case, there is a clear prayer for declaration of the Will as a forged and fabricated document. In order to make, or deny, such a declaration, it will be necessary to lead evidence as to whether the said Will is a forged and fabricated document as alleged, or otherwise.

In this view of the matter, I find no error in the impugned order and present Civil Revision accordingly stands, dismissed.

31.01.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No