

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-5718-2022 (O&M)

Date of Decision: 8.8.2023

Sukhwant Kaur (since deceased) through her LR

....Petitioner

VERSUS

Rupan Deol Baja and others

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sunny K. Singla, Advocate,
for LR of the petitioner.

Mr. M.L.Saggar, Sr. Advocate with
Ms. Madhu P. Singh, Advocate,
Mr. Animesh Sharma, Advocate,
Mr. Armaan Saggar, Advocate,
Mr. Rohit Joshi, Advocate,
for respondents No.1 to 3-caveator.

KARAMJIT SINGH, J.

Present petition has been filed by petitioner/defendant No.1 for setting aside order dated 4.3.2020 (Annexure P-3) passed by the Court of Civil Judge, Junior Division, Mohali whereby the application filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed.

2. Present petition is resisted by counsel for respondents No.1 to 3.

3. I have heard counsel for the parties.

4. Counsel for the petitioner submits that earlier also, plaintiffs-respondents No.1 to 3 filed similar suit on the basis of one sale deed and the said civil suit was decided by the Court of Civil Judge, Senior Division, Kharar vide judgment dated 19.1.2002 and the appeal filed against the said judgment was also dismissed by the Court of Additional District Judge,

Roopnagar on 28.11.2006 and RSA filed by the plaintiffs was dismissed by this Court vide judgment dated 10.12.2012; that now again the plaintiffs have filed civil suit with regard to same property on the basis of adverse possession.

5. Counsel for the petitioner further submits that thus, the present suit is barred under Section 11 CPC and Order 2 Rule 2 CPC. In support of his contentions, counsel for the petitioner referred to copy of judgment dated 19.1.2002 (Annexure P-4) passed in Civil Suit No.165 of 7.5.1988 titled Raunak Singh v. Balwinder Kaur and others, copy of judgment dated 28.11.2006 passed by the Court of Additional District Judge, Ropar in Civil Appeal titled M/s Simran Dhaliwal and others v. Sukhwant Kaur and others Ex.DX and judgment dated 10.12.2012 (Annexure P-6) passed by this Court in RSA-666-2008. Counsel for the petitioner further submits that as the suit is barred by principle of *res judicata* and under Order 2 Rule 2 CPC, the plaint deserves to be rejected.

6. Counsel appearing on behalf of respondents No.1 to 3 submits that no ground is made out to reject the plaint at the very threshold. It is further submitted that in order to prove the fact that the present suit is barred under Section 11 and under Order 2 Rule 2 CPC, recording of evidence is necessary as the petitioner has to prove the pleadings of the previous suit and the issues framed therein and the findings given by different Courts with regard to said issues. In support of his contentions, counsel for respondents No.1 to 3 has placed reliance upon decision of Hon'ble Supreme Court in **Sathyanath and another v. Sarojamani**, Civil Appeal No.3680 of 2022 decided on 6.5.2022 wherein the order passed by High

Court remanding the matter to the learned trial Court to frame preliminary

issue as to whether the suit is hit by *res judicata* and estoppel, was set aside while holding that the said order runs counter to the mandate of Order 14 Rule 2 CPC and further directed that the learned trial Court shall record findings on all the issues. Counsel for the respondents further submits that there is no illegality in the impugned order.

7. I have considered the submissions made by the counsel for the parties.

8. The petitioner filed an application under Order 7 Rule 11 CPC on the ground that the suit is barred, being hit by principles of *res judicata* and is also barred under Order 2 Rule 2 CPC. The said application was declined by the learned trial Court vide impugned order. Being aggrieved, the petitioner has filed the present petition. To my mind, the petition is devoid of merits.

9. Hon'ble Apex Court in **Srihari Hanumandas Totala v. Hemant Vithal Kamat and others** (2021) 9 SCC 99 held that the plaint in the subsequent suit cannot be rejected on the ground that it is barred by principles of *res judicata* as the same will require production of pleadings, issues framed and judgment in previous suit, to compare it with the present suit and that cannot be done for deciding an application under Order 7 Rule 11(d) CPC as only the averments in the plaint itself are to be considered at this stage. Similar view has been taken by Hon'ble Supreme Court in **Sathyanath's** case (*supra*) which has been relied upon by the counsel for the respondents.

10. Even in order to prove that subsequent suit is barred under Order 2 Rule 2 CPC, the pleadings of the parties, issues framed and judgment in the previous suit are required to be taken into consideration and

that is also matter of evidence. The learned trial Court rightly observed that such adjudication is not possible on a bare perusal of the plaint.

11. Present suit has been filed by respondents No.1 to 3 seeking declaration to the effect that they are owners in possession of the land measuring 24K-8M as detailed in the headnote of the plaint and further, that registered agreement to sell dated 3.11.2017 entered by defendant No.2 being GPA of defendant No.1 with defendant No.3 regarding suit land is illegal, null and void and that mutation No.4135 dated 6.10.2017 entered and sanctioned with regard to suit land is also illegal, null and void. The aforesaid agreement to sell and mutation came into existence much after the institution of the previous suit which was finally decided vide judgment dated 10.12.2012 by this Court in RSA-666-2008. In the given circumstances, from bare perusal of the plaint, it cannot be said that respondents No.1 to 3 are having no cause of action to file the subsequent suit or that the subsequent suit is hit by principle of *res judicata* and is also barred under Order 2 Rule 2 CPC.

12. Consequently, the present revision petition is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

August 8, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No