

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-5886-2022****Date of decision: 16.01.2023****Narinder Kumar Gulati****...Petitioner(s)****Vs****Ramesh Rani Gulati & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Puja Chopra, Advocate for the petitioner.

*********NIDHI GUPTA, J.**

Present Revision Petition has been filed for setting aside impugned order dated 03.10.2022 passed by learned Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioner/defendant No.1 under Order 7 Rule 11 CPC for rejection of the suit filed by the respondents No.1 and 2 herein, being barred under Order 2 Rule 2 CPC, has been dismissed.

Brief facts of the case are that the petitioner is stated to be the adopted son of late Sh. Kewal Krishan Gulati son of Sh. Munshi Ram Gulati. Respondent No.1 herein/Smt. Ramesh Rani Gulati is the wife of said late Sh. Kewal Krishan Gulati, and respondent No. 2 herein is their natural-born daughter. Present dispute pertains to the Civil Suit(s) filed by respondent No.1 and respondent No.2/plaintiffs.

It is submitted by learned Counsel for the petitioner that in short, the case of the petitioner is that the respondents No.1 and

2/plaintiffs have filed two earlier suits wherein the relief claimed is same/similar to the one claimed by them in the present suit, and as such, they are now barred under Order 2 Rule 2 CPC to claim the same reliefs by way of the present/third Civil Suit filed by them against the petitioner. It is submitted that the issues and prayers in all the three Civil Suits are similar especially issues raised in the present/third Civil Suit are covered by first two Civil Suits. It is submitted that accordingly, the learned trial Court was in error in dismissing the petitioner's application under Order 7 Rule 11 CPC for rejection of the plaint being barred under Order 2 Rule 2 CPC.

It is further submitted that the earlier suit filed by the plaintiffs is with regard to the same property namely M/s. Shobha Knitting Works (hereinafter referred to as "the Firm"), claiming themselves to be the only legal heirs of late Sh. Kewal Krishan Gulati with regard to the property in suit and claiming separate possession of the properties and accounts of the said firm. It is stated that property in suit now claimed under the present suit is the same property.

Learned counsel further submits that it is the pleaded case of the petitioner that by way of prayer made in the very first suit, the respondents/plaintiffs have intentionally relinquished their claims in regard to other properties of late Sh. Kewal Krishan Gulati. It is submitted that accordingly, the present suit wherein they have laid claim to entire estate of late Sh. Kewal Krishan Gulati, is not maintainable for this reason as well.

Learned counsel refers to the pleadings in the aforementioned three Civil Suits to inter alia submit that the respondents have also made contradictory claims in the three suits. It is submitted that as per the first Civil Suit it was the contention of the respondents/plaintiffs that the Firm was a partnership firm wherein it was admitted that the petitioner was partner to the extent of 50%; and that immovable properties in the ownership of the said firm had been purchased vide five sale deeds bearing Wasika Nos.10418, 10297, 12823, 12599 and 12496. It is submitted that however, vide the present Civil Suit the respondents/plaintiffs, in contradiction of their earlier assertion, are now claiming 100% ownership of the said firm and its assets.

It is further submitted by learned counsel that the respondents/ plaintiffs had omitted to claim certain reliefs in earlier Civil Suits, and therefore, they cannot now be permitted to fill the lacuna of earlier suits by filing a fresh suit. To substantiate her assertion, learned counsel for the petitioner painstakingly took me through the voluminous revision petition to demonstrate that with each consecutive suit, the respondents/plaintiffs have made an attempt to improve their case, and that the third and present suit is an amalgamation of the first two suits.

It is further submitted by learned counsel for the petitioner that the subject matter of all the above said three Suits is similar and if new parties had to be impleaded by way of subsequent suits, the same could have been done by way of invoking provisions of Order 1 Rule 10 CPC in the first suit itself, instead of filing three separate different Suits.

It is submitted that accordingly, the learned trial Court is in prima facie error in dismissing the petitioner's application under Order 7 Rule 11 CPC for rejection of the plaint as the present suit of the respondents No.1 and 2/plaintiffs is barred under Order 2 Rule 2 CPC.

I have heard learned counsel for the petitioner.

A perusal of the record of the case shows that the first Civil Suit was filed on 30.08.2008 (Annexure P13) by respondents No.1 and 2 against the present petitioner for declaration to the effect that the Firm stood dissolved on 02.09.2005 on death of late Sh. Kewal Krishan Gulati; and for rendition of account of the said firm and for partition of movable and immovable properties of the firm. As such, the first Civil Suit (Annexure P13) dated 30.08.2008 was a suit for declaration thereby seeking dissolution of the Firm. This Civil Suit was filed only against the petitioner.

Second Civil Suit dated 01.04.2009 (Annexure P17) was filed for recovery of Rs.64,82,195/-. This suit was filed against the Firm, and against the petitioner and his wife, who were defendants No.2 and 3 respectively.

The third/present Civil Suit dated 27.04.2010 (Annexure P19) has been filed by the same plaintiffs/respondents No. 1 and 2 herein, against the petitioner, his biological mother and his biological brother, and this is a:

"suit for declaration that Shri Kewal Krishan Gulati son of Shri Munish Ram Gulati (husband of plaintiff no.1 and father of plaintiffs no.2 and 3) died interstate leaving behind the plaintiffs as his only legal heirs and that the alleged Will said to be dated 11.09.2001, alleged to have been registered on the same day is a complete forgery, fabrication

and was never executed by late Shri Kewal Krishan Gulati and that the alleged document is nothing but result of fraud and impersonation;

And

That the plaintiffs are the exclusive owners of the properties left by Late Shri Kewal Krishan Gulati, detailed as below:-

a) Property measuring 2632 sq. yards (4 Kanals 7.1/2M) comprised in Khasra no.6//14, 17/1, Khata No.317/327 as per Jamabandi for the year 2004-05 situated at Village Haibowal Khurd, Hadbast No.158, Opposite Kali Mata Mandir, Hambran Road, Tehsil and District Ludhiana as shown red in the site plan attached and bounded as under:-

East: Factory Building of Skyway Hosiery

West: Property of neighbour which was previously

Owned by Gajjan Singh, Kashmir Singh and Jasbir Singh

North: Budha Nullah

South: Main Hambran Road

b) Firm M/s Shobha Knitting Works (Regd) its machinery including five stall machines, ran material and knitted stock, goodwill, trade mark "VOLGA", assets including the cars make Mercedes, Swift, Innova, Jazz, Honda City and Santro, etc. belonging to firm M/s Shobha Knitting Works (Regd), lying in the premises of the firm situated at Opposite Kali Mata Mandir, Hambran Road, Ludhiana and also the capital standing to the credit of Shri Kewal Krishan Gulati in the said firm.

And

Suit for declaration that the defendant no.1 was never adopted by Late Shri Kewal Krishan Gulati and that all the documents being set up by defendant no.1 whereby he is claiming himself to be the son of late Shri Kewal Krishan Gulati are illegal, void and ineffective against the rights of the plaintiffs;

And

Suit for possession of the aforementioned property;

And

Suit for the grant of permanent injunction restraining the defendant no.1 from alienating, disposing off or transferring the possession of the aforementioned properties movable to anybody else, except for the plaintiffs, on the basis of oral and documentary evidence."

Thus, the third/present Civil Suit has been filed for declaration regarding entire properties of late Sh. Kewal Krishan Gulati. By way of present Civil Suit, the respondents/plaintiffs have primarily made three prayers/sought three declarations to the effect that; a) Shri Kewal Krishan Gulati son of Shri Munish Ram Gulati (husband of respondent/plaintiff No.1 and father of respondent/plaintiff No.2) died intestate leaving behind the plaintiffs as his only legal heirs and that the alleged Will said to be dated 11.09.2001, is a complete forgery, fabrication and was never executed by late Shri Kewal Krishan Gulati; b) that the plaintiffs are the exclusive owners of the properties left by Late Shri Kewal Krishan Gulati; c) that petitioner/defendant no.1 was never adopted by Late Shri Kewal Krishan Gulati and that all the documents pertaining thereto whereby the petitioner is claiming to be the son of late Shri Kewal Krishan Gulati are illegal and void.

In my view, from a perusal of the above facts it is clear that all the three Civil Suits have been filed on three entirely different causes of action and against three different sets of parties. As noted above, the first Civil Suit has been filed for declaration to the effect that the firm stood dissolved; second Civil Suit is a suit for recovery simpliciter; and third/present Civil Suit is for three declarations as aforementioned.

It has further come on record that written statement to the first Civil Suit was filed by the petitioner on 25.09.2008 (Annexure P14) and it is only thereafter that the respondents/plaintiffs discovered about the alleged Will dated 11.09.2001 of late Sh. Kewal Krishan Gulati, whereby the petitioner is laying claim to the estate of late Sh. Kewal

Krishan Gulati. It is admittedly in these circumstances that the respondents/plaintiffs filed the present/third Civil Suit against the petitioner.

In my view, causes of action in all the three suits are fundamentally dissimilar inasmuch as first suit is for dissolution of the firm; second is a suit for recovery; and by way of third suit, respondents/plaintiffs are claiming to be 100% exclusive owners of the properties left by late Sh. Kewal Krishan Gulati. Admittedly, in the earlier two Suits, no claim regarding inheritance of property of late Sh. Kewal Krishan Gulati has been made.

Accordingly, I find that present suit is not barred by res judicata under Order 2 Rule 2 CPC and therefore, there is no error in the impugned order dated 03.10.2022. Present Revision Petition accordingly stands dismissed.

16.01.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No