

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

CR No.50 of 2024 (O&M)
Date of decision : 15.07.2024

Dharampal & anr.

..... Petitioners

versus

Niranjna Devi

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

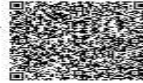
Present :- Mr. S.K.Tripathi, Advocate
 for the petitioners.

PANKAJ JAIN, J. (ORAL)

1 Present revision petition is directed against the order dated 02.12.2023 (Annexure P-5) passed by Civil Judge (Sr.Divn) Narnaul whereby the application filed by the petitioners/defendants under Order 7 Rule 11 of the Code stands dismissed.

2 Plaintiff filed suit for partition by metes and bounds claiming herself to be co-sharer in the suit property along with the defendants.

3 Defendants filed application under Order 7 Rule 11 of the Code seeking rejection of plaint. In the application defendants claimed that the suit was barred by limitation. The suit was for possession of a property having value in lakhs whereas the Court fee affixed was Rs.200/-. The plaintiff was required to affix ad-valorem Court fee on the value of the property and thus plaint deserves to be rejected. The third plea raised in the application was with respect to misjoinder and non-joinder of necessary parties.



4 Trial Court dismissed the application filed by the defendants holding that the suit has been filed by the plaintiff asserting her status to be that of a co-sharer. As per the revenue record i.e. Jamabandi for the year 2017-2018 both the parties to the suit have been recorded as co-sharer and thus defendants were not required to pay ad-valorem Court fee. The suit being for partition and the plaintiff having been recorded as co-sharer in possession, the suit was not barred by time.

5 Assailing the order passed by the trial Court learned counsel for the defendants submits that a preliminary objection was raised with respect to non-impleading of other co-sharers and the plaint was liable to be rejected on the said ground. However, trial Court erred in not considering the plea raised by defendants.

6 I have heard learned counsel for the defendants and have carefully gone through the records of the case.

7 In order to appreciate the argument advanced by the learned counsel for the defendants, it will be apposite to peruse bare provision as contained under Order 7 Rule 11 of the Code reads as under :-

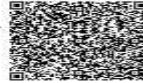
“11. Rejection of plaint.-The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;



(e) where it is not filed in duplicate;
(f) Where the plaintiff fails to comply with the provisions of rule 9.”

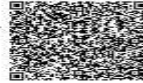
8 The aforesaid provision has been interpreted elaborately by Apex Court in the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) through LRs & ors., 2020 INSC 450*** wherein after considering case law Apex Court observed as under :-

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to



occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

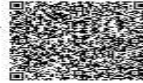
23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

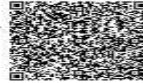


"139. Whether a complaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the complaint itself. For the said purpose, the averments made in the complaint in their entirety must be held to be correct. The test is as to whether if the averments made in the complaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardesh Ores (P) Ltd. v. Hede& Co. [Hardesh Ores (P) Ltd. v. Hede& Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The complaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the complaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941).

23.13. If on a meaningful reading of the complaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the complaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji



Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823].

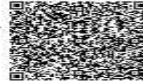
23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"

9 The aforesaid proposition stands reiterated by Supreme Court in ***Geetha, D/o Late Krishna & ors. Vs. Nanjundaswamy & ors., (2023) SCC OnLine SC 1407*** laying down the test as under :-

“7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.”

10 In order to test the facts of the present case on the touch stone of the aforesaid principle it will be apt to peruse the averments made in the plaint which read as under :-

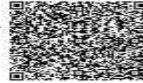
“4. That plaintiff's husband has died and after the death of plaintiff's husband, plaintiff has sometimes been living with her children in Narnaul to raise her children and to provide them with good education and the land has remained in Mutnaja. She has also been living in a ruined house and on 18.11.2018, when plaintiff went to her house situated in Mutnaza along with her elder son, she saw that all the household items of plaintiff had been destroyed and defendants told the plaintiffs' son that we will not let you use the house. On this, plaintiff was very surprised and on this plaintiff told the people of the society and



plaintiff also went to the police station shop and searched the goods. Informed about the burial and nefarious intentions of defendants, but did not take any action because the police station assistant was in connivance with defendants and said that the police station cannot distribute anyone's house and property, this task is done by the court. And it hurt to plaintiff a lot and plaintiff is a widow and has small children and no support. Therefore, plaintiff has considered it appropriate and extremely necessary to divide his land and house and till date no partition of his land and house has been done by any competent court, and hence it is necessary and necessary to divide it.

5. That plaintiff took Deepak Kumar draftsman from Civil Court Narnaul to get the map made of the land and house in possession of which we are the owner, then defendants got very angry on this and Map Navis was not able to measure the land and house. Neither did he allow the map to be made nor did he allow the map to be made and he threatened not to get the map made, that is why the map is being presented in the Nazariya court, sir. It is worth mentioning that plaintiff is a fair lady and does not have much knowledge of law and the real deed of marriage is also with defendants because he is elder in the defendants family and when plaintiff asked defendants to give the original deed, then defendants did not give the real deed. Clear refusal even to give the undertaking That's why the certified copy of the original deed is being presented from the Registrar's office to the court.

6. That defendants is a powerful and quarrelsome person and the defendants, by conspiring among themselves, want to take over the ownership and ownership of plaintiff over the suit land without getting it divided and want to interfere in the peaceful arrangement of the plaintiff and want to get the specific portion of the said Aaraji. They want to take possession of the property and want to evict the plaintiff from the said property. Who do not have any rights and authority. If the defendants succeed in their above mentioned illegitimate intentions, the plaintiff will suffer

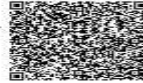


incalculable loss which cannot be compensated in cash and the very purpose of filing the claim will be defeated.”

11 Thus in the present case the plaintiff claims to be in possession as a co-sharer and is seeking partition of the property by metes and bounds. Thus the issue raised by the defendants with respect to under valuation of the suit has been rightly rejected by the Court below.

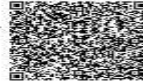
12 Coming on to the question with respect to rejection of the plaint for misjoinder of parties, the precise issue came up for consideration before Supreme Court in the case of ***Prem Lala Nahata & anr. Vs. Chandi Prasad Sikaria, (2007) AIR (Supreme Court) 1247*** wherein it has been held as under :-

“13. It is well understood that procedure is the handmaid of justice and not its mistress. The Scheme of Order I and Order II clearly shows that the prescriptions therein are in the realm of procedure and not in the realm of substantive law or rights. That the Code considers objections regarding the frame of suit or joinder of parties only as procedural, is further clear from [Section 99](#) of the Code which specifically provides that no decree shall be reversed in appeal on account of any misjoinder of parties or causes of action or non-joinder of parties unless a Court finds that the non-joinder is of a necessary party. This is on the same principle as of [Section 21](#) of the Code which shows that even an objection to territorial jurisdiction of the Court in which the suit is instituted, could not be raised successfully for the first time in an appeal against the decree unless the appellant is also able to show consequent failure of justice. [The Suits Valuation Act](#) similarly indicates that absence of pecuniary jurisdiction in the Court that tried the cause without objection



also stands on the same footing. The amendment to Section 24 of the Code in the year 1976 confers power on the Court even to transfer a suit filed in a Court having no jurisdiction, to a Court having jurisdiction to try it. In the context of these provisions with particular reference to the Rules in Order I and Order II of the Code, it is clear that an objection of misjoinder of plaintiffs or misjoinder of causes of action, is a procedural objection and it is not a bar to the entertaining of the suit or the trial and final disposal of the suit. The Court has the liberty even to treat the plaint in such a case as relating to two suits and try and dispose them off on that basis.

14. Order VII Rule 11 (d) speaks of the suit being "barred by any law". According to the Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection. According to RamanathaAiyar's Law Lexicon, 'bar' is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is



mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant. Not only are there no words of such import in Order I or Order II but on the other hand, Rule 9 of Order I, Rules 1 and 3 of Order I, and Rules 3 and 6 of Order II clearly suggest that it is open to the court to proceed with the suit notwithstanding the defect of misjoinder of parties or misjoinder of causes of action and if the suit results in a decision, the same could not be set aside in appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied. Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order VII Rule 11(d) of the Code.

15. Thus, when one considers Order VII Rule 11 of the Code with particular reference to Clause (d), it is difficult to say that a suit which is bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the Court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits.

13 In view of the aforesaid settled proposition of law, this Court finds that the grounds pressed by the defendants seeking rejection of plaint do not satisfy the parameters of Order 7 Rule 11 of CPC and



the trial Court rightly dismissed the application filed by the defendants.

14 Resultantly, present revision is dismissed being without any merit.

(PANKAJ JAIN)
JUDGE

15.07.2024
Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No