

139.

2024:PHHC:038014

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

Civil Revision No.518 of 2024

Date of Decision: 01.02.2024

Arun Khurmi

... Petitioner

Versus

Sanjana Sood and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Anil Bansal, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 15.01.2024 (Annexure P-1) passed by learned Civil Judge (Senior Division), Ludhiana, whereby application moved by the petitioner under Section 41(h) of Specific Relief Act, 1963 and under Order 7 Rule 11 read with Section 9 and Section 151 CPC, has been dismissed.

2. Brief facts as culled out from the petition are that respondent No.1-plaintiff (hereinafter called, "plaintiff") filed a suit for permanent injunction restraining the petitioner and respondent No.2 herein (hereinafter called, "defendants") from making any additional alteration, causing any damage, change in the nature of the property and raising any type of construction and even installation of shutter etc. without the consent of the plaintiff in the shop part of the property bearing No.B-1-810/3, F/2, Prem Nagar, Civil Lines, Ludhiana, with specific boundaries as mentioned in the headnote of the plaint. The suit

was filed on the ground that the plaintiff purchased the said property from Shri Raj Kishan son of Shri Sham Lal vide registered sale deed dated 13.02.2013 and at that time, possession of the property was given to the plaintiff. At the time of purchasing the property, defendant No.1- Arun Khurmi, petitioner herein, was tenant in the shop at a monthly rent of Rs.7,000/-. He took the property for the office of Lawyer. He paid rent to the plaintiff only for the month of February and March, 2013. Lateron, he lingered on the matter on one pretext or the other. The plaintiff was residing with her husband at Chandigarh and used to come to Ludhiana to see her mother-in-law. Defendant No.1, without the consent/writing of plaintiff, sublet the property to defendant No.2, who was running a Milk Booth in the shop in dispute and has started getting rent from defendant No.2 @ Rs.12,000/- per month.

2.1 Upon notice, defendant No.1 appeared and filed written statement that he was the actual owner and in possession of suit property on the basis of full and final agreement dated 14.06.1995 executed by Raj Krishan Beri in favour of Roshan Lal, father of defendant No.1, for a total sale consideration of Rs.5 lakhs, which was paid to him. Roshan Lal had expired. Two shops were constructed in the said property. Since the dispute regarding title of the property was pending before the High Court, so it was agreed between the parties that the sale deed of the property would be executed after the decision of writ petition. It was also agreed that in case from the total property measuring 68 square yards if any portion was cut off for the purpose of laying road, in that case Raj

Krishan Berry shall execute sale deed of the remaining property in favour of defendant No.1. Defendant No.1 let out one shop bearing No.1 from the suit property to M/s Progressive Dairy Solutions Private Limited in April, 2016 vide written agreement and shop No.2 was in possession of defendant No.1 where his lawyer's office is situated. It was further submitted that on the intervening night of 17/18.09.2007, certain miscreants broke into the shop of defendant No.1 and committed theft of certain papers including original agreement to sell/purchase dated 14.06.1995 executed by Raj Krishan Berry in favour of late Roshan Lal. FIR was also lodged in this respect. However, photocopy of said agreement is in possession of defendant No.1. On 09.09.2016, defendant No.1 received notice from the Municipal Corporation, Ludhiana to remove the construction that would be required for the purpose of widening of the road. Then defendant No.1 himself demolished the same. He came to know that litigation qua the property, in dispute, has achieved its finality and as such, he asked Raj Krishan Berry to execute and get the sale deed registered of remaining portion of the property in his favour, but said Raj Krishan Berry refused to accept said request. Defendant No.1 also filed a suit against Raj Krishan Berry, in which, order of status quo was passed. Plaintiff moved an application under Order 1 Rule 10 CPC in the said case, but despite that, plaintiff is interfering in the possession of defendant No.1.

2.2 Defendant No.1 moved an application under Section 41(h) of Specific Relief Act, 1963 and under Order 7 Rule 11 read with Section

9 and Section 151 CPC that plaintiff also filed a rent petition against defendant with regard to property in question, so suit was not maintainable as the proceedings had emanated from the rent petition and only Rent Controller was empowered to grant any interim relief. The instant suit was barred under Section 41(h) of the Specific Relief Act, 1963. The alternative remedy was available to the plaintiff before the Rent Controller under the Rent Act, so, prayer for dismissal of suit was made.

2.3 Reply was filed by the plaintiff by contending that proceedings of eviction petition and the present suit are different one and suit was maintainable.

2.4 Vide impugned order dated 15.01.2024, the application filed by the petitioner-defendant No.1, was dismissed. It is the said order which has been challenged by way of present revision petition.

3. Learned counsel for the petitioner-defendant No.1 has argued that remedy to seek eviction on the basis of relationship of landlord and tenant is provided under the Punjab Rent Act and the plaintiff has already filed a petition for ejectment. So, suit is barred by the provisions of Section 41(h) of Specific Relief Act, 1963 and Section 9 of CPC. It is submitted that defendant No.1 is in possession of suit property not as a tenant of the plaintiff but in his own right on the basis of agreement to sell dated 14.06.1995 entered by Raj Krishan Berry with the father of defendant No.1. The entire amount of consideration had already been paid, so suit is not maintainable. Reliance is placed on

Bharat Heavy Electricals Limited, Ranipur, Haridwar Versus Sanjay Paliwal and another, 2012(65) R.C.R. (Civil) 190, an authority of Uttarakhand High Court; ***M/s Deepika Constructions by its Proprietor Versus L.V. Rajendran, Law Finder Doc Id # 2035541***, an authority of Madras High Court.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the file.

5. The relevant extract of case ***Dahiben Versus Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others, (2020) 7 Supreme Court Cases 366***, an authority of Hon'ble Supreme Court, reads as under:-

“23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which 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:

Provided that the time fixed by the court for the correction of the valuation supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

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, 1986 Supp SCC 315, 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, read in conjunction with the documents relied upon, or whether the suit is barred by any law."

5.1 As per Section 41(h) of Specific Relief Act if equally efficacious remedy is available to the plaintiff, then plaintiff cannot seek relief of injunction by filing civil suit. Section 41(h) of Specific Relief Act reads as under:-

"41. Injunction when refused.—An injunction cannot be granted—

(a) to (g)

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.”

5.2 The case of the petitioner is that the suit for permanent injunction is not maintainable since the plaintiff has already filed a rent petition and equally efficacious remedy is available to the plaintiff. Rent Controller cannot issue any injunction. So, when a tenant is going to make additions, alterations or damage to the demised premises, then the landlord has got every right to seek injunction against the tenant and such a remedy is only availed by filing suit before the civil court. At the time of disposal of the application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen and defence of the defendants cannot be considered. No doubt if suit is cleverly drafted, then court can go deep to understand the real purpose for filing the suit. In the case in hand, simple suit is that there is relationship of landlord and tenant between the parties and the plaintiff has sought injunction against defendant No.1 as tenant and defendant No.2 as sub-tenant of defendant No.1. So, suit itself is maintainable. Under Section 9 of CPC, it is the duty of the civil court to try all civil suits unless barred, in accordance with law. Since no other remedy is available to the plaintiff to get the relief sought in the suit, so, the suit is maintainable.

5.3 In case ***Bharat Heavy Electricals Limited, Ranipur, Haridwar (supra)***, the defendant had constructed boundary wall on the land owned by the plaintiff. It is dispossession of the plaintiff from the

land covered by the boundary wall. It was held that the suit of injunction without seeking the relief of injunction would be barred under Section 41(h) of the Specific Relief Act. In case *M/s Deepika Constructions (supra)*, there was order of contract, dispute arose regarding construction in the property, the court allowed the application for temporary injunction. It is held that the suit is based on contract, so remedy available to the plaintiff is to sue for specific performance and to sue for damages. Suit for injunction was held to be barred under Section 41(h) of the Specific Relief Act. Both these authorities are of no help to the petitioner.

6. In the light of above discussions, the suit filed by the plaintiff for injunction is maintainable before civil court on the cause of action mentioned in the plaint. Thus, this Court is of the view that lawful order has been passed by the trial Court and no ground is made for interference. The revision petition is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

February 01, 2024

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No