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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8825-2015 (O&M)
Reserved on : 11.01.2024
Date of decision : 16.01.2024

Joginder Singh & Anr. ... Petitioner(s)

Versus

Harjit Singh & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Maninder S. Gill, Advocate for the petitioners.
Mr. Rakesh Bakshi, Advocate for respondent Nos.1 to 4.

ALKA SARIN, J.

1. The present civil revision petition under Article 227 of the Constitution of India has been filed challenging the impugned order dated 20.10.2015 dismissing the application filed by the defendant Nos.1 and 2- petitioners for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC).
2. The suit was filed by plaintiff-respondent Nos.1 and 2 for declaration challenging the gift deed dated 22.10.1992, judgment and decree dated 03.02.1995, sale deed dated 25.06.2001 and Will dated 24.11.1976.
- The plaintiff-respondent Nos.1 and 2 filed the suit challenging the said

alienation on the ground that the alienated property was a part of the joint Hindu family property and hence the alienation is bad in law. The defendant Nos.1 and 2-petitioners filed a written statement as well as an application for dismissal of the suit on the ground of *res judicata*. It was averred in the application that an identical suit was filed by Parkash Singh and others. It was further averred that the plaintiff-respondent Nos.1 and 2 are the grandsons of Parkash Singh (defendant No.3 in the suit) and earlier defendant Nos.3 and 4 had filed one civil suit for declaration challenging the same gift deed, judgment and decree and sale deed. The said suit was compromised and was dismissed as withdrawn on 04.04.2008. Thereafter defendant Nos.3 and 4 in the present suit once again filed an identical suit regarding the suit property on the same very ground and the same was dismissed on 04.08.2012 being not maintainable. It was averred that the present suit has been filed in collusion with defendant Nos.3 and 4. The application for dismissal of the suit was dismissed vide the impugned order dated 20.10.2015. Hence, the present civil revision petition.

3. Learned counsel for the defendant Nos.1 and 2-petitioners has vehemently contended that the present suit was barred by the principles of *res judicata* in view of the dismissal of the earlier suit filed by defendant Nos.3 and 4 as well as the suit prior to that in which the compromise had been entered into. It is further the contention of the learned counsel that the suit is barred under Order 23 Rule 3A CPC as no independent suit can be filed challenging a compromise decree. In support of his contentions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court

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in the case of **M/s Sree Surya Developers and Promoters Vs. N. Sailesh Prasad & Ors. [2022 (5) SCC 736]**.

4. *Per contra*, the learned counsel for the plaintiff-respondent Nos.1 to 4 has contended that the Hon'ble Supreme Court in the case of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors. [2021 (3) RCR (Civil) 768]** has held that where a plaint does not disclose any fact that may lead to the conclusion that it deserves to be rejected on the ground that it is barred by principles of *res judicata*, a plaint cannot be rejected under Order 7 Rule 11D CPC.

5. Heard.

6. In the present case the plaintiff-respondent Nos.1 and 2 had filed the present suit claiming themselves to be having a share in the joint Hindu family property. Both the plaintiff-respondent Nos.1 and 2 were not parties to the previous litigation.

7. The Hon'ble Supreme Court in the case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors. [2018(5) RCR (Civil) 163]** has held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to

challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

8. Further in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi** [2019(1) RCR (Civil) 366] it has been held as under :

“15. By applying the aforesaid principles in the

judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

9. For considering the application under Order 7 Rule 11 CPC, it is only the plaint that has to be seen. Neither the written statement nor the contents of the application can be seen while deciding the application under Order 7 Rule 11 CPC. In the present case from a meaningful reading of the plaint it cannot be said that the same is barred by the principles of *res judicata*. The Hon’ble Supreme Court in the case of **Srihari Hanumandas Totala** (supra) has held as under :

“21. xxxx

Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the

plaint, and peruse the pleadings, and judgment and decree in OS No.103/2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application under order 7 Rule 11(d).

22. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the Trial Court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata.”

10. The judgment relied upon by the learned counsel for defendant Nos.1 and 2-petitioners in the case of **M/s Sree Surya Developers and Promoters** (supra) pertains to a case where a suit was filed challenging a compromise decree. In the present case the plaintiff-respondent Nos.1 and 2 were not party to the decree passed on the basis of a compromise. Hence, at this stage it cannot be said that the suit is barred by the principles of *res judicata* or the suit is barred under Order 23 Rule 3A CPC. It is also pertinent to note that the argument of the learned counsel for the defendant Nos.1 and 2-petitioners that the suit is barred by Order 23 Rule 3A CPC is not even raised in the application for rejection of the plaint and was also neither raised/argued before the Trial Court.

11. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

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12. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

16.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO