

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****132****CR-4216-2024 (O&M)****Reserved on : 31.07.2024****Pronounced on : 21.08.2024**

Manju Chauhan

....Petitioner

VERSUS

Shree Shree Jagannath Seva Sangh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anupal Singh Tanwar, Advocate for
Mr. Abhimanyu Singh, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been filed by the defendant No.1-petitioner challenging the order dated 20.03.2024 passed by the learned Civil Judge (Junior Division), Gurugram whereby the application filed by her under Order VII Rule 11 CPC was dismissed.

2. The brief facts relevant to the present case are that the plaintiff-respondent Nos.1 and 2 filed a suit for declaration, permanent injunction and possession with the averments that the plaintiff-respondent No.2 had purchased the suit property from Amarnath vide registered sale deed dated 23.04.1987. Amarnath had represented that he had purchased the suit property from Sant Singh and Shanti Devi vide sale deed dated 25.11.1982. After purchasing the suit property the plaintiff-respondent No.2 had enclosed the same by erecting a pucca boundary wall and a steel gate and water and electricity connections had been obtained. In February 2019 the plaintiff-respondent No.2 found that some miscreants had caused loss and damage to the existing structure and damaged the wall and removed the water connection installed at the suit property and upon further enquiry it

was revealed that the said wrongful act was done by the defendants by taking undue advantage of wrong mutation entries in order to grab the suit property. It was alleged that the defendant Nos.4 and 5 (heirs of Sant Singh) had got the mutation of inheritance of Sant Singh sanctioned in their favour and had thereafter sold the suit property to defendant Nos.1 to 3 vide sale deed dated 21.12.2018. Mutation was also got sanctioned on the basis of sale deed dated 21.12.2018. Since the plaintiff-respondent No.2 was facing difficulty in looking after and guarding the suit property, on 28.06.2019 the plaintiff-respondent No.2 gifted the suit property to the plaintiff-respondent No.1. As such, the plaintiff-respondent Nos.1 and 2 challenged the mutation of inheritance of Sant Singh in favour of defendants No.4 and 5 as well as sale deed dated 21.12.2018 in favour of defendants No.1 to 3 to be illegal, null and void. An application was filed by the defendant No.1-petitioner for rejection of the plaint under Order VII Rule 11 CPC on the ground that the suit was not maintainable under Section 41(h) of the Specific Relief Act as the plaintiff-respondent Nos.1 and 2 had an efficacious remedy available; that the defendant Nos.1 to 3 had purchased the suit property from defendant Nos.4 and 5 (heirs of Sant Singh) on 21.12.2018 and had sold the same to one Smt. Sunita on 18.11.2019. The Trial Court vide order impugned dated 20.03.2024 dismissed the said application. Alongwith the present civil revision the defendant No.1-petitioner has attached as Annexure P-4 a copy of a civil revision filed by her against the impugned order before the District Judge, Gurugram. There is no averment as to what happened to this petition and neither is the counsel able to inform the Court.

3. Learned counsel for the defendant No.1-petitioner would contend that the suit property was sold to one Smt. Sunita and there was a

registered sale deed in her favour and thus there was no cause of action against the defendant No.1-petitioner and the plaint was liable to be rejected. The said Smt. Sunita had not been impleaded by the plaintiff-respondent Nos.1 and 2 and the sale deed in her favour had not been challenged.

4. Heard counsel for the defendant No.1-petitioner.

5. It is trite that at the stage of dealing with an application under Order VII Rule 11 CPC only the contents of the plaint are to be seen. On a meaningful reading of the plaint, it cannot be ascertained as to whether the matter would be barred against the defendant No.1-petitioner as there is no averment in the plaint regarding the alleged sale in favour of Smt. Sunita. The suit was filed on 14.11.2019 while the alleged sale in favour of Smt. Sunita is on 18.11.2019. As far as the averments in the plaint are concerned, they are sufficient to proceed against the defendant No.1-petitioner and others. On a meaningful reading of the plaint it cannot be said that the suit is barred or that there is no cause of action against the defendant No.1-petitioner. For a suit to be dismissed at the outset under Order VII Rule 11 CPC, the plaint has to be such that on a meaningful reading of it, it without any doubt or dispute, shows that the same is barred by any law in force. No provision of the Specific Relief Act, 1963 has been cited to show that the suit was barred or not maintainable.

6. In the case of **Chotanben and another vs Kiritbhai Jalkrushnabhai Thakkar [2018 (5) RCR (Civil) 163]** the Hon'ble Supreme Court 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.”

In the case of **Pawan Kumar V/s Babulal (since deceased) through LRs & Ors. [2019 (2) RCR (Civil) 744]** it was held by the Apex Court as under :

“3. In the present case, the controversy has arisen in an application under Order 7, Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order 7, Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property vs. State Bank of India Staff

*Association, 2005 (4) RCR (Civil) 334; (2005) 7 SCC
510*

10. Clause (d) of Order 7, Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7, Rule 11 CPC. Clause (d) of Rule 11 Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

7. In view of the above, there is no illegality or irregularity in the impugned order. 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.

21.08.2024
jk

(ALKA SARIN)
JUDGE

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