

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

129

CR-4551-2024
Date of Decision: 18.09.2024

PARVEEN NAIDU ALIAS PARVEEN

...Petitioner

Versus

KRISHAN AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

VIKAS SURI, J. (ORAL)

1. Challenge in this petition under Article 227 of the Constitution of India is to the order dated 31.05.2024 (Annexure P-10) passed by learned Civil Judge (Junior Division), Safidon (Jind), whereby the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, (for short 'CPC') has been dismissed.
2. The facts in brief, leading to filing of the present petition are that the respondent-plaintiff filed a suit for possession of *gair mumkin* land measuring 6 *marla* situated in Village Jaipur, Tehsil Safidon, District Jind, and for permanent injunction restraining the defendants from alienating the land in dispute.
3. Upon notice of the suit, defendant No.4/petitioner moved an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground of non disclosure of cause of action and being barred by law.



Upon notice of the application, the same was opposed by the plaintiff/respondent by filing reply. The trial Court considering the rival submissions made before it and upon perusal of the plaint, dismissed the aforesaid application vide order dated 31.05.2024.

4. Aggrieved by the said order, the petitioner has raised challenge to it by way of the present petition. Learned counsel for the petitioner has emphatically argued that the plaint does not disclose the cause of action and it also does not mention the previous litigation in which the suit was filed on 21.10.2009 and disposed of vide order dated 11.11.2009. On an appeal thereagainst, a compromise was effected between the parties, whereupon the plaintiff withdrew the appeal on the statement of the defendants dated 05.08.2011, agreeing to construction of a fresh wall alongwith the disputed wall.

5. Learned counsel for the petitioner would point out that in the application under Order 7 Rule 11 CPC it has been incorrectly mentioned that the suit, in the year 2009, was filed by the plaintiff alongwith his brothers. It is clarified that the said suit was filed by the family of the petitioner and not by the plaintiff-respondent. It is further contended that in view of the above, the partition already having been effected, the present suit has been filed beyond the period of limitation.

6. I have heard learned counsel for the petitioner and perused the record with his able assistance.

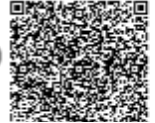
7. It would be gainful to refer to the law laid down on the issue arising in the present petition. In case *Madanuri Sri. Rama Chandra Murthy*



vs. *Syed Jalal*, (2017) 13 SCC 174, the Hon'ble Supreme Court held as under:-

"7. The plaint can be rejected under Order 7, Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7, Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7, Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7, Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7, Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

8. In *Saleem Bhai and others vs. State of Maharashtra and others*, (2003) 1 SCC 557, it has been held that for the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the



averments in the plaint are germane. The pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

9. In ***P.V. Guru Raj Reddy rep. by GPA Laxmi Narayan Reddy and another vs. P. Neeradha Reddy and others***, (2015) 8 SCC 331, the Hon'ble Apex Court held:-

"5. Rejection of the plaint under Order 7 Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11 therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

10. On a conjoint reading of the above reproduced precedents, it percolates that for the consideration of an application under Order 7 Rule 11 CPC only the averments made in the plaint can be looked into.

11. The relevant averments made in the plaint, read thus:-

"3. That the plaintiff alongwith other co-sharers filed a civil suit No.568 of 2011 instituted on 23.08.2011 titled as Sunil Kumar etc. Vs. Ram Kumar etc., for permanent injunction but the Ld. Addl. Civil Judge (Sr. Div), Safidon vide it's judgment and decree dated 27.08.2014 had held that the land comprised in Rect. No.172/1 (0-12) is in possession of the defendants and thus the plaintiffs cannot seek relief of permanent injunction



without possession. The plaintiffs of that suit challenged the said judgment and decree in Civil appeal No.159 of 2014 instituted on 29.09.2014 and vide order dated 24.10.2017 the court of Sh. Sanjeev Arya Ld. Additional District Judge, Jind affirmed the judgment and decree dated 27.08.2014.

4. That the plaintiff etc. got partitioned the suit land in a partition suit from the court of Sh. Vishal Ld. Addl. Civil Judge (Sr. Div), Jind and the suit land measuring 6 Marla comprised in Rect. No.172/1/1 has come to the share of plaintiff on which the defendants have already encroached by raising boundary wall.

5. That the defendants are stranger to the suit land and they have no right; title or interest with the suit land and their possession over the suit land is illegal and unlawful and the same is liable to be removed immediately.

6. That the defendants were requested many a times to give the possession of the land in dispute to the plaintiff and to remove their encroachment upon the same, but they have refused to do so finally yesterday and even threatened the plaintiff to alienate the suit land.

7. The cause of action arose to the plaintiff to file the present suit yesterday when the defendants refused to vacate the land in dispute.”

12. A perusal of the plaint and in particular the portion extracted above, would show that it has been averred that the cause of action has arisen to the respondent-plaintiff a day prior to filing of the suit, when the defendants refused to vacate the land in dispute. It has also been averred in the plaint that the land measuring 6 *marla* comprised in Rect. No.172/1/1 that came to the share of the plaintiff on partition, had already been encroached upon by the defendants by raising a boundary wall. The aforesaid would show that the cause of action has been pleaded in the plaint and the veracity of the same would be tested during the course of the trial, after the parties



have adduced their evidence. Therefore, reliance upon the material referred to by learned counsel for the petitioner, which does not find mention in the plaint, cannot be looked into at this stage, to reject the plaint at the threshold.

13. It is also well settled that the plea of limitation is a mixed question of law and fact, which cannot be decided at the threshold and the same would be a matter of trial. Reference may be made to the decision of the Hon’ble Supreme Court in *Salim D. Agboatwala and others vs. Shamalji Oddhavji Thakkar and others*, (2021) 17 SCC 100.

14. Learned counsel for the petitioner is not in a position to dispute the law settled by the Apex Court. Moreover, nothing has been pointed out to the Court that may bring to the fore any distinguishing fact in the present case.

15. In view of the above discussion, this Court is of the considered view that the impugned order does not suffer from any illegality or perversity, which may warrant interference. Moreover, neither the impugned order suffers from any jurisdictional error nor any has been pointed out during the course of hearing.

16. Resultantly, the present petition being bereft of merit, is dismissed *in limine*.

September 18, 2024

Varinder/shruti

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No