

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4211-2022 (O&M)

Date of Decision: March 06, 2024

Ajay Solanki

...Petitioner

Versus

Parvesh Kumar

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Mahesh K. Mehta, Advocate
for the petitioner.

Mr.Saurabh Dalal, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 17.09.2021 passed by learned trial Court, whereby, an application under Order 7 Rule 11(a) read with Section 151 CPC, filed at the instance of petitioner-defendant was dismissed.

The facts germane, to be noticed, are as follows:-

That, respondent-Parvesh Kumar had filed a suit against the petitioner (who was defendant before learned trial Court), thereby, seeking declaration/cancellation of the sale deeds No.6808 and 6809 dated 06.11.2012, with consequential relief of permanent injunction. Therein, it was asserted that plaintiff (respondent herein) is owner in possession of the house, as detailed in paragraph No.1 of the suit and furthermore, the said

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property was purchased by Smt.Sarjo Devi @ Saroj Devi d/o Shri Chand w/o Lt. Sh.Ram Kishan from Sh.Ram Das, vide sale deed dated 31.12.1986, whereas, the part of the suit property marked as ADEF, as detailed in paragraph No.2 of the plaint, was also purchased by Smt.Sarjo Devi vide sale deed dated 20.10.1993 and she was owner in possession of the same. She had raised construction over the said properties.

Furthermore, it is asserted in the plaint that Sarjo Devi @ Saroj Devi died on 29.09.2016. She had executed and got registered a Will on 01.08.2016 of her entire property along with suit property, in favour of the plaintiff, in the presence of the witnesses. Further, it is also asserted that Ram Kishan, father of the respondent-plaintiff was married with Smt.Krishna Devi and the respondent-plaintiff was born from the said wedlock. However, mother of respondent-plaintiff had died about 30 years ago and after her death, Ram Kishan had performed second marriage with Smt.Sarjo Devi @ Saroj Devi, but no child was born from their wedlock. Father of the respondent-plaintiff had also died. Deceased Sarjo Devi @ Saroj Devi, used to call and treat respondent-plaintiff as her son. Furthermore, it has also been asserted that Sarjo Devi, during her lifetime had given the suit property on monthly rent to Sh.Manjeet @ Gohli and he was put in possession of the property, at the rate of Rs.500/- per month. However, petitioner-defendant, namely Ajay Solanki @ Popa, who is nephew of Sarjo Devi had approached her in the month of November 2012 to give on lease/rent the suit property for two years @ Rs.2500/- per month and assured her to eject the tenant Manjeet from the suit property, after execution of the lease deed. On this pretext, he had brought Sarjo Devi to

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Tehsil premises Bahadurgarh, by making the excuse of execution and registration of the lease/rent deed and got the sale deeds executed. It is specifically asserted about the petitioner-defendant to have fraudulently got impugned sale deeds executed in his favour on 02.11.2012 and got the same registered on 06.11.2012.

Further, it is asserted that the respondent-plaintiff came to know about the said lease deeds only in the month of March 2017, when he had received the Court summons of civil suit for permanent injunction, titled 'Ajay Solanki vs. Paresh Kumar', pending in the court of learned Addl. Civil Judge (Sr. Divn.) Bahadurgarh. Thereafter, he had asked the petitioner-defendant to get the sale deeds cancelled and not to dispossess the respondent-plaintiff from the suit land, on the basis of the impugned sale deeds, but to no effect and the same constitutes the cause of action.

In pursuance of the notice issued by the Court, the petitioner-defendant had made appearance and had filed an application under Order 7 Rule 11 CPC, wherein, it was asserted that plain and meaningful reading of the plaint together with the contents of the documents, relied upon by the plaintiff, totally failed to show or disclose any cause of action, which arose or had arisen in favour of the plaintiff, entitling him to seek a claim. Also, it was averred that plaintiff has relied upon the Will dated 01.08.2016 of Sarjo Devi, but has totally failed to show or disclose any right or legal character, whatsoever, belonging to the plaintiff or in connection or incidental to the suit property or any part thereto, the existence whereof is a condition, qua in accordance with a provision of Sections 31 and 34 of the Specific Relief Act. As such, a prayer was made for rejection of the plaint, for apparent

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lack of cause of action..

In reply, the respondent-plaintiff had submitted that the reasons of manner of arising of cause of action were clearly mentioned in the plaint and also the alleged sale deeds are based on fraud and substantive rights of the plaintiff have been violated by the said sale deeds.

After hearing learned counsel for the parties, vide impugned order, the application under Order 7 Rule 11 CPC was dismissed. Even, review application was filed and the same was also dismissed vide order dated 14.07.2022.

Being dissatisfied, the petitioner-defendant has filed the present revision petition.

In pursuance of the notice issued, the respondent-plaintiff had made appearance through counsel.

Undisputedly, from the facts, coming forth, in the paperbook, it is evident that Sarjo Devi was owner in possession of the suit property, which form the basis of the questioned sale deeds. Though, it is submitted that on the basis of the Will, the respondent-plaintiff, as such, cannot assert his rights, but however, this question is a matter of evidence. Outrightly, on the basis of the contents of the plaint, the same, as submitted, cannot be held so. It is a specific claim of the petitioner-defendant that the sale deeds dated 02.11.2012, are forged and fabricated. In the given circumstances, this question also, can be gone into, after the evidence is brought on record.

The plaint cannot be rejected, on the basis of the allegations made by the defendant in the application for rejection of the plaint. The Court has to read the entire plaint, as a whole, to find out whether it

discloses the cause of action and if it does, then, the plaint cannot be rejected by the Court, exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses the cause of action, is a question of fact, which has to be gathered, on the basis of the averments made in the plaint, in its entirety, taking those averments to be correct. As already observed aforesaid, in the plaint, there are assertions about the Will having executed by Sarjo Devi, in favour of the petitioner-defendant, whether it is a valid Will or not or whether any rights flow from the same or not, is a question, to be adjudicated after the evidence is adduced.

Moreover, in the plaint itself, it has been asserted that the sale deeds dated 02.11.2012 are forged and fabricated documents and the plaintiff came to know about the same, only after he had received summons in the suit filed at the behest of the petitioner-defendant for permanent injunction and thereupon, cause of action accrued to him, to file the suit.

Such being the assertions, it cannot be said that apparently, there is lack of cause of action. Precisely, on this account, learned trial Court has rightly dismissed the application for rejection of the plaint and consequential review application.

Hence, the present revision petition sans merit and the same is hereby dismissed.

March 06, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No