

2024:PHHC:039373

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124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision :18.03.2024

1. **SAO-87-2015(O&M)**

Udmi Ram @ Udami Ram and others ...Appellants

Vs.

**Smt. Basanti Devi through LRs
Rakesh Kumar and others**

...Respondents

2. CR-4069-2016 (O&M)

**Smt. Basanti Devi (deceased) through LRs
Rakesh Kumar and another** **...Appellants**

Vs.

Udmi Ram @ Udami Ram and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Goel, Advocate
for the appellants.

Mr. Aman Bahri, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

1. With the consent of the learned counsel for the parties, this order shall dispose of SAO-87-2015 and CR-4069-2016. In SAO-87-2015, the correctness of the First Appellate Court's order setting aside the trial Court's order rejecting the plaint at the threshold is assailed.

2. In order to understand the controversy involved in the present litigation, relevant facts in brief are required to be narrated.

3. Deity of Raghunathji is the owner of land located in village Chhilaro, Tehsil Narnaul. There was dispute between two Mahants to manage the property of deity. Maru Dass claiming to be the Mahant of the religious

property filed a suit against Gordhan Dass disciple of Narsing Dass in 1963. He claimed that Gordhan Dass is not a Mahant of the religious institution. The suit was decreed on 02.02.1976. Subsequently, in between, there was exchange of the property belonging to the religious institution by Gordhan Dass with various persons. The appellant-Udmi Ram also exchanged 04 Kanals and 01 Marla land with Gordhan Dass. Gordhan Dass on the strength of the aforesaid exchange, transferred land measuring 04 Kanals 01 Marla by virtue of two sale deeds dated 31.07.1972 and 19.06.1974 in favour of Smt. Basanti Devi widow of Murlidhar. Maru Dass filed a fresh suit for grant of decree of declaration that the exchange deeds executed by Gordhan Dass were illegal, null and void. The aforesaid suit was decreed in the year 1995. Subsequently, Udmi Ram and another filed a suit for grant of decree of declaration on 14.06.1996. Maru Dass did not implead Smt. Basanti Devi as defendant. The suit was filed against the society and Gordhan Dass and was decreed on 31.08.2005. In execution of the decree Udmi Ram and another wanted to take possession. At that stage Smt. Basanti Devi filed the objection petition, however, that was dismissed by the Executing Court summarily while observing that she is purchaser *lis pendens*. The Court did not cull out the issues involved in the matter and permit the parties to lead evidence. The dismissal of the objection petition filed by Smt. Basanti Devi was upheld in the appeal by the First Appellate Court as well as by the High Court in revision petition. Subsequently, Smt. Basanti Devi filed a suit for grant of decree of declaration that she is the owner in possession of the property by virtue of sale deeds executed on 31.07.1972 and 19.06.1974 with a consequential relief of permanent injunction. Udmi Ram filed an application under Order 7 Rule 11 of the Code of Civil Procedure to reject the plaint,

which was allowed. However, the First Appellate Court has held that it would not be appropriate in the facts and circumstances of the present case to reject the present plaint at the threshold and therefore, set aside the order passed by the trial Court while directing the trial Court to decide the suit within a period of 6 months.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

5. Learned counsel representing the appellants contends that Smt. Basanti is a purchaser governed by rule of *lis pendens* and her objection petition has already been dismissed. While relying upon the Order XXI Rule 101 of the Code of Civil Procedure, he contends that Smt. Basanti Devi's separate suit is not maintainable.

6. *Per contra*, learned counsel representing the respondent-Smt. Basanti Devi contends that the sale deeds in favour of the Smt. Basant Devi are not hit by rule of *lis pendens* and she has not been granted opportunity to prove her case neither by deciding objection petition nor in this suit. He further submits that the objection petition filed by Smt. Basanti Devi was not third party objections as she was successor in interest of the judgment debtor. She was purchaser of the suit property from deity through Gordhan Dass.

7. This Court has considered the submissions of learned counsel representing the parties. Under Order VII Rule 11 of Code of Civil Procedure, the Court has enabling power to reject the plaint on various grounds listed therein, which includes that the suit appears from the statement in the plaint to be barred by law. In substance, learned counsel representing the appellants submits that in view of provisions of Order XXI Rule 101, a separate suit at the

behest of Smt. Basanti Devi is not maintainable. *Per contra*, it is the stand of the defendant that Order XXI Rule 101 is not applicable as the objections were not filed by Smt. Basanti Devi under Order XXI Rule 97 or 99 of the Code of Civil Procedure.

8. The enabling power to reject the plaint is required to be exercised only if the Court comes to a conclusion from reading of the plaint that the suit filed by the plaintiff is barred by law. While deciding such application, the Court is required to examine only the contents of the plaint and no other document. In this case, the Court is required to examine the entire evidence, which may be led by the parties. Moreover, it is evident that Smt. Basanti Devi has never been given opportunity to prove that she is a *bona fide* purchaser. Udmi Ram and another have already taken over the possession of the property. In such circumstances, Udmi Ram and another are not going to suffer any loss due to the pendency of the case. On the other hand, Smt. Basanti Devi is required to be given an opportunity to prove her case. At the cost of repetition, it may be noted that while deciding her objection petition, Smt. Basanti Devi was not given any opportunity to lead evidence.

9. The applicability of Order XXI Rule 101 of the Code of Civil Procedure is also debatable.

10. Keeping in view aforesaid facts and circumstances, this Court does not find it appropriate to interfere in the order passed by the First Appellate Court. However, learned trial Court is directed to make sincere endeavor for expeditious disposal of the suit as directed by the First Appellate Court.

11. In CR-4069-2016, Smt. Basanti Devi's application for permission

to amend the plaint in order to incorporate the relief of possession has been dismissed. Smt. Basanti Devi claims that she has been dispossessed during the pendency of the suit. In these facts and circumstances of the case, the trial Court clearly erred in dismissing her application. She is required to be given opportunity to prove that she has been dispossessed during the pendency of the suit.

12. Keeping in view the aforesaid facts and circumstances, CR-4069-2016 is allowed, whereas SAO-87-2015 shall stand dismissed.

18.03.2024		(ANIL KSHETARPAL)	
neeraj	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No