

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 18.01.2024

- (i)

CR-7700-2023 (O&M)
PREM CHAND AND ANR

..... PETITIONERS
- VS
- RAGHBIR SINGH AND ORS
- RESPONDENTS
- (ii)

CR-7701-2023 (O&M)
PREM CHAND AND ANR

..... PETITIONERS
- VS
- JAGBIR
- RESPONDENT
- (iii)

CR-7704-2023 (O&M)
PREM CHAND AND ANR

..... PETITIONERS
- VS
- MAHABIR
- RESPONDENT
- (iv)

CR-7716-2023 (O&M)
PREM CHAND AND ANR

..... PETITIONERS
- VS
- JAGBIR & ANR
- RESPONDENTS
- (v)

CR-7731-2023 (O&M)
PREM CHAND AND ANR

..... PETITIONERS
- VS
- RAGHBIR SINGH & ANR
- RESPONDENTS

(vi) CR-7866-2023 (O&M)

PREM CHAND AND ANR

..... PETITIONERS

VS

CHANDER THRU HIS LRS

.... RESPONDENTS

(vii) CR-7872-2023 (O&M)

PREM CHAND

..... PETITIONER

VS

RAGHBIR SINGH AND ORS

.... RESPONDENTS

CORAM:HON'BLE MR. JUSTICE GURBIR SINGH

Present : Mr. Gurminder Singh Phull, Advocate for the petitioners.

GURBIR SINGH, J.

1. The aforesaid revision petitions have been filed against the separate orders dated 10.08.2023 passed on applications under Order 7 Rule 11 read with Section 151 CPC moved by the petitioners in different suits filed by the respondents/plaintiffs.

2. Challenge in these petitions is to the order passed by learned Additional Civil Judge (Senior Division) Kharkhoda in 7 suits filed by the respondents/plaintiffs whereby separate applications moved by the defendant No.1/petitioner under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of plaint of said suit has been dismissed. Since common question of fact and law is involved, so, all these petitions are being disposed of together.

3. For the purpose of deciding these petitions, the facts have been taken from Civil Revision No. 7700-2023.

4. The brief facts necessary for the disposal of the revision petition are that the respondents/plaintiffs have filed a suit for declaration, possession and permanent injunction that in the jamabandi for the year 1988-89, the suit property was described as Gair Mumkin Gitwar and father of the plaintiffs, plaintiffs themselves and other co-sharers of the father of the plaintiffs were recorded as owners in possession. Similarly in the jamabandi for the year 1962 to 1994, plaintiffs, their father and other co-sharers were shown as owners in possession of the suit land. The agriculture land of the plaintiffs and their father was partitioned into 9 shares. The suit property was carved out in the shape of plot Gair Mumkin Gitwar. The mutation was sanctioned on the basis of partition and they are using this rasta for ingress and outgress of the remaining plots. This plot was never given as Dholi to the defendants/ petitioners. A fraudulent application was moved by the defendants on 21.07.1995 which was decided on 16.08.1995 against the plaintiffs and their father and through this order, the name of the defendants were written as Dholidar in the column of cultivation of jamabandi for the year 1994, which is illegal. The defendants also moved an application under Sections 3 and 4 of the Haryana Dholidar Act in the court of learned SDJM, Kharkhoda and order dated 22.09.2016 was passed in favour of defendants and the plaintiffs filed an appeal against the said order and the same was dismissed. According to Section 3 and Sub Section 6 of the Act, only agriculture land can be described as Dholidar and non-agricultural land which is Gair Mumkin Gitwar could not be given as Dholi.

5. The defendants/petitioners moved an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on the ground that the plaintiffs challenged the order dated 21.07.1995 passed by ACIG Kharkhoda and also order dated 22.09.2016 which was passed in application under Sections 3 and 4 of Haryana Dohlidar Act in favour of the defendants, the mutation was sanctioned on the basis of said order and the same was also challenged. The order passed by ACIG Kharkhoda was never challenged so same has attained finality. The plaintiff appeared before the learned Collector, Sonipat through counsel on 12.08.2013 and the order of SDM (Collector) was challenged before the Commissioner, who dismissed the appeal but plaintiff did not challenge the order passed by the Commissioner, rather the remedy available to the plaintiff was to challenge the said order before the Financial Commissioner. The suit is barred by limitation. Under Section 10 of the Dholi Act, the jurisdiction of the civil court is barred, so, plaint is liable to be rejected under Order 7 Rule 11 of CPC.

6. Learned counsel for the defendants/petitioners has argued that the petitioner earlier instituted the suit on 31.01.2007 for declaration to the effect that he was lawful legal heir of Dohlidars, being the nearest collateral, and to get mutation of succession sanctioned in his name as successor-in-interest of the Dohlidars. The said suit was decreed vide judgment and decree dated 05.05.2008. The said judgment has attained finality. The respondents could file appeal against the said judgment and decree under Section 96 of CPC or could file review under Section 114 of CPC. Reliance has been placed on case *My Palace Mutually Aided Coop.Society v. B.Mahesh*, 2022 SCC Online SC 1063; *Padam Sen Vs. State of U.P*, AIR

1961 SC 218; Ram Parkash Agarwal vs. Gopi Krishan, (2013) 11 SCC 296.

It is further argued that Court of same jurisdiction cannot set aside the judgment passed by the Court of equal jurisdiction. The respondents/plaintiffs could approach the Financial Commissioner against the order of sanctioning of mutation. The jurisdiction of the civil court is barred under Section 10 of the Dohlidar Act, 2010. No cause of action accrued to the respondents to file the suit. This suit deserves to be rejected on account of deficient court fee. He has further argued that law does not permit clever drafting which creates an illusory cause of action. The Court is required to read the plaint in a meaningful manner and not in a formal manner. Reliance has been placed on the case laws *Ramisetty Venkatanna v. Nasyam Jamal Saheb, 2023 SCC Online SC 521; T.Arivandandam v. T.V.Satyapal, (1977) 4 SCC 467; Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137; ITC Ltd. v. Debts Recovery Appellate Tribunal (1998) 2 SCC 70; Madanuri Sri Rama Chandra Murthy v. Syed Jalal (2017) 13 SCC 174; Ram Singh v. Gram Panchayat Mehal Kalan (1986) 4 SCC 364; Subhaga v. Shobha (2006) 5 SCC 466 and Nusli Neville Wadia v. Ivory Properties (2020) 6 SCC 557.*

7. The instant suit is nothing but to take property back by misusing the armor of law. It is further submitted that the remedy under Order 7 Rule 11 CPC is an independent and special remedy where the Court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence. Reliance has been placed on *Dahiben Vs. Arvinbhai Kalyanji Bhanusali, (2020) 7 SCC 366.*

8. I have heard the submissions of the learned counsel for the petitioners.

9. The petitioner/defendant No.1 earlier filed suit for declaration that he is the legal heir of Dohlidars, being the nearest collateral, against Karan Singh and general public. Karan Singh admitted the case of the petitioner but none had appeared on behalf of the general public, so the general public was proceeded against ex-parte. The said suit was decreed vide judgment dated 05.05.2008. Now, the respondents/plaintiffs have submitted that there is no other co-sharer of this land which was given to Dholidar and after the death of issueless Dohlidar, the Dohli was complete and the land again should be vested to their original owners. The judgment and decree dated 05.05.2008 has been challenged inter alia on the ground that it had been obtained fraudulently by the petitioner. Since the instant suit has been filed on the ground that judgment and decree dated 05.05.2008 was a result of fraud, so said decree can only be challenged in a separate suit. It cannot be challenged by third party by way of appeal or review since no evidence is recorded in appeal or review and fraud can only be proved by way of leading evidence. At the time of deciding the application under Order 7 Rule 11 CPC, only pleadings, as mentioned in the plaint, are to be seen. The defence of other party cannot be seen. No doubt, the Court cannot ignore the clever drafting but if the facts in the plaint are clear, then these cannot be ignored. Since the decree has been challenged on the ground of fraud, so suit is maintainable. The Court below has rightly held that limitation is a mixed question of fact and law and the same cannot be decided summarily. The judgment and decree dated 05.05.2008 can only be challenged in the civil Court and any mutation sanctioned on the basis of said judgment decree is subject to decision of the civil case, so non-approaching before the Financial Commissioner against the mutation has no

effect on the instant suit and plaint cannot be rejected on this ground. It is a specific case of the plaintiffs/respondents that predecessor-in-interest of the defendant was not Dohlidar for the last twenty years and he got his name entered on 16.02.2008. This fact is to be decided on the basis of evidence to be led, suit cannot be summarily rejected on this ground. The learned Court below has relied on case *Liverpool and London S.P. and I Association Limited Versus M.V.Sea Success*, (2004) 9 SCC 51 wherein the Hon'ble Apex Court has laid down the test which provides that whether the plaint discloses a cause of action or not is essentially a question of fact. Prima facie, it cannot be said that plaintiffs/respondents have no cause of action to file the suit since they are original owners of the property and decree was passed without impleading them as party. The suit land is an agricultural land. The court below has rightly held that suit is for declaration, possession and permanent injunction and proper court fee has been affixed with the plaint.

10. In view of above, I do not find any illegality and irregularity in the order passed by learned Court below. These petitions are without merit and are dismissed accordingly.

11. Pending applications, if any, shall also stand dispose of in view of the above-said order.

(GURBIR SINGH)
JUDGE

18.01.2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No