



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

(i) CR-2307-2016 (O&M)

Naresh and another

...Petitioners

VERSUS

M/s Commander Realtors Pvt. Ltd.

...Respondents

(ii) CR-2308-2016 (O&M)

Jagdish and others

...Petitioners

VERSUS

M/s Commander Realtors Pvt. Ltd.

...Respondents

Date of Decision: February 24, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kunal Dawar, Advocate
for the petitioners.

Mr.Puneet Bali, Senior Advocate with
Mr.Prateek Rathee, Mr.Abhishek Sharma, Mr.Niharika Mittal,
Mr.Sachin Jain and Mr.Anmol Chandan, Advocates
for the respondent.

ARCHANA PURI, J.

Through the present revision petitions, the petitioners-plaintiffs
have challenged largely similar orders dated 11.03.2016 passed by learned
trial Court, thereby, allowing the application under Order 7 Rule 11 CPC,
filed in two similar suits by the respondent-defendant.

**CR-2307-2016 and connected case****-2-**

The petitioners (plaintiffs in both the suits) filed suits for seeking declaration, thereby, declaring sale deeds dated 21.08.2012 (which forms the basis of the respective suits), as illegal, null and void and further that plaintiffs may be declared as owners in possession of the suit land, as detailed in the respective suits, with consequential of permanent injunction, to restrain the defendants from taking forcible possession, dispossessing the plaintiffs, in any manner and from interfering in peaceful use and enjoyment of the aforesaid property and also from selling, leasing, creating any type of encumbrances or third party rights, in the suit land.

For the convenience of discussion, the facts are taken from the civil suit relating to CR-2307-2016.

The civil suit, relating to which CR-2307-2016 has been filed, was filed by Naresh and Mahesh sons of Ganeshi and specific case pleaded therein, was that previously, the suit land was owned and possessed by Ganeshi s/o Surjan, who is father of the plaintiffs and Ganeshi s/o Surjan, had died on 15.01.2012. The said property was then inherited by the plaintiffs and they became owners in possession of the same. Ganeshi s/o Surjan had left behind a registered Will in favour of the plaintiffs and on the basis of the registered Will bearing vasika No.39 dated 06.10.1995, the plaintiffs had become owners in possession of the suit property. The mutation No.2143, regarding the said Will was also sanctioned in favour of the plaintiffs and on the basis of this mutation, the plaintiffs had become owners in possession of the suit property.

However, the defendant had filed false and frivolous suit against the plaintiffs, on the basis of the sale deed No.3661 dated 21.08.2012 and they

**CR-2307-2016 and connected case****-3-**

claim ownership over the suit property. It was further stated that mutation No.2143 and Will dated 06.10.1995, are illegal, null and void. The defendants had intentionally not disclosed in the suit, which was filed in the year 2013 that they had got a sale deed executed, in their favour, on the basis of GPA and there was no reference of the said sale deed bearing No.3661 dated 21.08.2012, in the suit filed by the defendant, which is pending adjudication. It is further stated that they had intentionally and willfully not disclosed about the said sale deed in the said suit, as the sale deed is sham and bogus document and the same does not create any right, in favour of the defendant, as the said sale deed was got executed, after the death of Ganeshi, which was got executed, on the basis of the Power of Attorney, which had lost its sheen, as on the date of execution of the sale deed, Ganeshi was not alive, but the defendant, in the sale deed, had shown Ganeshi to be alive. They manipulated GPA and in connivance with the Sub-Registrar, they got the sale deed executed of the property, although, Ganeshi had expired before the date of execution of the sale deed and as such, no sale could take place, after his death.

The alleged GPA is also forged and fabricated document. Furthermore, a plea of fraud, having been played by the defendant upon the plaintiffs, while getting the sale deed executed, on the basis of false and frivolous GPA, had also been taken.

The other civil suit was filed by Jagdish, Sarjit, Baljit and Bir Singh sons of Lekha, thereby, seeking similar declaration and consequential relief of permanent injunction and assertions are also similar, but for the date of death of Lekha, their father on 23.02.2011; date of Will executed by their

**CR-2307-2016 and connected case****-4-**

father dated 28.06.2007, in their favour and mutation No.2140. Rest all other assertions are similar, as given aforesaid, with regard to the manner of having managed to get the execution of the sale deed, on the basis of false and frivolous GPA, as pleaded in the earlier suit.

In pursuance of the notice issued, the respondent-defendant, had filed applications under Order 7 Rule 11 CPC, for seeking rejection of the plaints. In fact, it was averred in the applications that from the bare reading of the plaints, it is clear that plaintiffs have categorically challenged the validity and legality of the sale deeds dated 21.08.2012, favouring the defendant. Their whole claim is based on dishonesty and concealment of material facts. In fact, the sale deeds were lawfully and validly executed by the duly constituted attorney of Ganeshi (in other suit Lekha) and the entire sale consideration was also received. Interest was created in favour of the defendant, on the basis of the said GPA, which was irrevocable and for valuable sale consideration and thus, the same could not be cancelled in any manner, even by the death of the principal.

In the given circumstances, it was asserted that since, the sale deeds have been disputed, therefore, ad valorem Court fee, was payable and in the absence of the same, the plaints are liable to be rejected.

However, in pursuance of the notice of the aforesaid application, the petitioners-plaintiffs had made appearance and filed reply, wherein, various preliminary objections were taken and also it was reiterated that the sale deeds, are result of fraud and no GPA exist after death of the person. The transactions relied upon by the defendant are totally false and baseless.



After hearing counsel for the parties, vide impugned orders, the applications under Order 7 Rule 11 CPC, filed at the instance of the defendant were allowed and a direction was given to the plaintiffs (petitioners) to pay ad valorem Court fee, on or before the date fixed i.e. 08.04.2016.

Being aggrieved, the petitioners (respective plaintiffs in both the suits) have filed the respective revision petitions.

Learned counsel for the parties heard.

The rejection of a plaint under Order 7 Rule 11 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 CPC, therefore, are stringent and have to be very meticulously seen, to be existing. In fact, at the stage of considering an application under Order 7 Rule 11 CPC, the averments made in the plaint, are required to be taken into consideration. In fact, the averments made in the plaint, will have to be accepted, as correct, for the purpose of consideration of the application under Order 7 Rule 11 CPC, filed at the behest of the defendant and the Courts, ought not to go beyond the same and appreciate/touch the merits of the case, while taking into consideration the contents of the written statement or of the application under Order 7 Rule 11 CPC.

In fact, it is the meaningful reading of the plaint, as a whole, taking it to be true, upon which, call is to be taken by the Courts, for payment of Court fee or not. However, at this stage, the Courts cannot pre-judge the truth, by examining the merits of the matter.

Of course, as submitted by learned counsel for the respondent,



many a times, there is clever drafting, at the behest of the plaintiffs, but may it be so, the Courts ought to take into consideration the complete assertions and one or two lines, in between, as such, cannot be picked up and considered for the purposes of consideration on the application under Order 7 Rule 11 CPC.

In the light of the aforesaid, adverting to the case in hand, it is pertinent to mention that primarily, the suits filed by the plaintiffs are for seeking declaration, thereby asserting themselves to be owners in possession of the suit land and the questioned sale deeds are not binding upon their rights. The petitioners (plaintiffs) assert that in pursuance of death of their respective fathers, they had become owners in possession of the suit properties, on the basis of the respective Wills, having executed, in their favour and that mutations were also sanctioned, on the basis thereof.

Indisputably, the petitioners are not party to the sale deeds in question. The plea of fraud has also been taken by the petitioners. They also assert sale deeds to be sham and bogus.

Considering the petitioners to be not executant of the sale deeds in questions and they asserting themselves, to be owners in possession, beneficial reference is made to the observations made by the Hon'ble Supreme Court in ***Surhid Singh @ Sardool Singh vs. Randhir Singh, 2010(2) RCR (Civil) 564***, wherein, it was observed, as herein given:-

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'.



Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

Though, it is asserted that sale deeds are under challenge and cancellation of the same is sought and therefore, to seek cancellation, ad valorem Court fee is payable, but however, this aspect is question of merit. For the purposes to adjudicate, on the application under Order 7 Rule 11 CPC, one has to keep in mind that the petitioners assert themselves, to be owners in possession, on the basis of the Wills and mutations were sanctioned in their favour. One also has to keep in mind that plea of fraud has also been raised by the petitioners-plaintiffs and that the sale deeds were got executed, much after the death of their respective fathers and after that, the land stood mutated in their names, at first instance.

What is the import of GPA, after death of fathers of the petitioners, collaboration agreement and the value of the sale deeds



CR-2307-2016 and connected case

-8-

executed, upon these aspects, call can be taken, at a later stage of the case. At this stage of considering the application under Order 7 Rule 11 CPC, the Court cannot pre-judge the truth by examining the merits of the matter.

Thus, considering the averments, made in the plaint, outrightly the petitioners, as such, cannot be said to be liable to pay the ad valorem Court fee. It is a call to be taken, as the case proceeds further and question ought to be kept open, till then.

In the light of the aforesaid observations, the impugned orders warrant interference. Hence, both the revisions petitions are allowed and the orders dated 11.03.2016 are hereby set aside and consequently, the applications under Order 7 Rule 11 CPC filed by the respondent-defendant are hereby dismissed.

February 24, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No