



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3975 of 2024 (O&M)

Date of Order:19.02.2025

Capt. Manoj Airon

.Petitioner

Versus

Heritage City Resident Welfare Association and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate, with
Mr. Devyani Sharma, Advocate
Mr. Paras Chander, Advocate
Mr. Sumit Jund, Advocate
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate, with
Mr. Amandeep Singh Talwar, Advocate
for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. **Factual Matrix:-**

1.1 This revision petition has been filed by the plaintiff to challenge the correctness of rejection of his plaint by the courts below in exercise of powers under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'].

1.2 The plaintiff(petitioner herein) filed a civil suit for grant of decree of declaration along with consequential relief of permanent and mandatory injunction. He claims that he purchased the suit property vide registered sale deed dated 17.12.2004. Subsequently, Mr. Harbans Singh Sarna agreed to purchase the suit property in the month of October, 2007, for a sale consideration of Rs.63,00,000/- and a registered agreement to sell



was entered into. Finally, the sale deed was registered in favour of Mr. Harbans Singh Sarna on 05.10.2007. In paragraph 5 of the plaint, the plaintiff asserts that though there is a recital of handing over of possession of the suit property to Mr. Harbans Singh Sarna, he continued to be in possession as Mr. Harbans Singh Sarna never claimed possession. After one month of the sale deed, Mr. Harbans Singh Sarna came to the suit property and requested the plaintiff to vacate and hand over possession of the suit property, however, the plaintiff refused. The plaintiff claims that he continued to be in possession of the property and was paying electricity and maintenance charges to defendant nos.1 and 2, namely, the Electricity Supply Company and the Resident Welfare Association.

1.3 Defendant no.3 is son of late Mr. Harbans Singh Sarna, who has never resided in the property. While filing the suit, the plaintiff has made the following 5 prayers:-

“In view of the above, it is most humbly prayed that the Honourable Court may be pleased to:

- (1) Pass a Decree of Declaration in favour of the plaintiff and against the defendants, more particularly against the defendant no.3, thereby declaring the plaintiff as owner-in-possession of the suit property, fully described in above para 2 of the plaint.*
- (2) Pass a Decree of Permanent Injunction, thereby restraining the defendants 1 & 3, their agents, legal heirs, relatives, employees, office bearers from interfering in peaceful possession of the plaintiff, not to cause hindrance in the free movement of the plaintiff and his family members and also creating any third party rights in the suit property in any*



manner, whatsoever.

- (3) Pass a Decree of Mandatory Injunction, thereby directing the defendants 2, to restore the electricity connection to the suit property and also directing the office bearers of the defendant no.1 to rejoin the plaintiff to the mygate app of the society.*
- (4) Costs of the suit be also granted to the plaintiff.*
- (5) Any other relief deem fit and proper in favour of the plaintiff and against the defendants.”*

1.4 An application under Order VII Rule 11 of the CPC was filed by defendant no.3 which has been allowed by the trial court which in turn has been affirmed by the Appellate Court.

1.5 Both the courts have rejected the plaint on the following grounds:-

- (1) the plaintiff after having delivered possession at the time of execution of the sale deed cannot take a different stand;
- (2) the plaintiff has interpolated notice sent to Sh. Vikas Khurana by the Police;
- (3) the receipt of payment of electricity bill is with respect to the year 2021 and not prior thereto and the connection is in the name of previous owner.

2. **Arguments addressed:-**

2.1 The learned senior counsel representing the petitioner submits that the rejection of the plaint at the threshold has serious consequences and the plaintiff who has been regularly paying the electricity consumption charges as well as maintenance to the respondent Resident Welfare



Association remained in possession. He submits that even if the possession of the plaintiff is unauthorized, still the suit could not be dismissed without giving him opportunity to prove his case. He further submits that while rejecting the plaint under Order VII Rule 11 of the CPC, only the averments made in the plaint are required to be seen, however, the court has travelled beyond that which is not permissible.

2.2 Per contra, the learned counsel representing the respondents submits that the power of rejection of the plaint is required to be exercised by the Court after scrutinizing the entire plaint. He submits that if the suit filed by the plaintiff is frivolous, the court should reject the plaint particularly when the plaintiff is guilty of interpolating the notice sent by the Police. He relies upon the judgment passed by the Supreme Court in *Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee, (2012) 8 SCC 706* and *Ramisetty Venkatanna and another vs. Nasyam Jamal Saheb and others, 2023 LiveLaw (SC) 372.*

3. **Discussion & Analyses:-**

3.1 This Bench has considered the submissions of the learned counsel representing the parties.

3.2 In the opinion of the Court, both the courts have erred in rejecting the plaint at the threshold for the following reasons:-

- (1) It is evident that the plaintiff while filing the suit has made three substantive prayers. The first prayer is with regard to declaration that the plaintiff has become owner



by way of adverse possession. The second prayer is to grant decree of permanent injunction restraining defendants no.1 and 3 from interfering in his peaceful possession. The third prayer is with regard to grant of decree of mandatory injunction directing defendant no.2 to restore electric connection which has been illegally disconnected. Both the courts have overlooked prayers no.2 and 3. It is well settled that the plaint cannot be rejected in part. Hence, even if the plaintiff may not succeed in the first prayer, however, that cannot be the basis to reject the plaint.

- (2) Both the courts have erred in relying upon the statement of the plaintiff which was recorded by the court at the threshold to the effect that the plaintiff admits his signatures on the sale deed. That would not itself be sufficient to reject the plaint because the plaintiff himself has stated in paragraph 4 that the sale deed was executed by him. Wherein it was recited that the possession has been delivered to the purchaser.
- (3) The Courts have also erred in recording a finding that the plaintiff has interpolated without granting opportunity to the plaintiff to prove that fact.

3.3 The reliance placed by the respondents' counsel upon the judgment passed by the Supreme Court in **Church of Christ Charitable Trust & Educational Charitable Society's case** (supra) is misplaced because



the Supreme Court has held that if the clever drafting of the plaint has created illusion of a cause of action it should be nipped in the bud at the first hearing. However, in this case the plaintiff has specifically asserted the cause of action to file the suit in paragraph 15, which reads as under:-

“15. That the cause of action to file the present suit firstly accrued on 12th Oct, 2022, when the plaintiff was served with the notice by the police. It further accrued when defendant no.2 disconnected the electricity connection on 24.11.2022 and also further accrued when the office bearers of the defendant no.3 started causing hindrance in the movements of the plaintiff and his family members. The cause of action is recurring one and each passing day gives a fresh cause of action in favour of the plaintiff to file the suit.”

3.4 In fact, the cause of action is a bundle of facts which have been pleaded in detail in the plaint. Similarly, the judgment passed in **Ramisetty Venkatanna's case(supra)**, lays down that the averments made in the plaint are required to be considered and not the averments made in the written statement. In the facts of that case, the court found that the plaint is vexatious and illusory cause of action has been created.

3.5 Undoubtedly, the courts should make an attempt to examine the plaint at the threshold so as to nip the unnecessary litigation in the bud. However, Order VII Rule 11 of the CPC envisages exercise of powers within the parameters laid therein. If the scope of Order VII Rule 11 of the CPC is expanded, it may result in serious consequences. Hence, while rejecting the plaint, the court is required to take a conservative view of strictly interpreting the provisions.



- 4.1 Consequently, the impugned orders are set aside. The trial court is requested to expeditiously dispose of the suit. It shall be open to defendant no.3 for interim relief, if any.
- 4.2 The revision petition is allowed.
- 4.3 The parties through their learned counsel are directed to appear before the trial court on 21.03.2025.
- 4.4 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

February 19, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No