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

FAO-5072-2017 (O&M)

Date of decision : 14.01.2025

SUKHBIR SINGH AND ORS.

....Appellants

Versus

UNION OF INDIA & ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. M.L. Sharma, Advocate with
Ms. Meenakshi Sharma, Advocate and
Mr. Sushil K. Sharma Advocate for the appellants.

Mr. Mayank Vashisht, Advocate for
Mr. Prateek Mahajan, Advocate for respondent No.1.

Mr. Deepak Sabherwal, Advocate for respondents No.2 and 3.

Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Deepinder Singh, Mr. Aman Gautam and
Mr. Shubham Gupta, Advocates
for respondent No.4(b), 4(c) to 9, 12 and 13.

Respondent No.14 to 16 proceeded against *ex parte*
vide order dated 22.08.2017.

Service upon LR's of respondents No.4(a), 10 & 11
stands dispensed with vide order dated 22.08.2017.

PANKAJ JAIN, J. (ORAL)

Instant appeal is directed against order dated 27.01.2016 passed
by Additional District Judge, Jhajjar whereby application filed under Order
VII Rule 11 CPC filed by the respondents stands allowed and the plaint
stands rejected holding that the plaintiffs filed earlier suit seeking decree of
mandatory injunction wherein the relief of declaration was not prayed for



and thus the instant suit seeking decree of declaration and mandatory injunction was barred by principle of constructive *res judicata* invoking Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC').

2. Ld. Counsel for the appellants while assailing the impugned order submits that the Court below has totally misdirected itself in invoking Order II Rule 2 CPC. He submits that the earlier suit was dismissed primarily holding that the Punjab Wakf Board being necessary and proper party was not impleaded. He further submits that Court below erred in adjudicating the application under Order VII Rule 11 CPC by looking beyond the plaint. He further submits that the objection w.r.t. suit being barred by principle of constructive *res judicata* invoking under Order II Rule 2 CPC being a mixed question of law and fact, ought not have been adjudicated at a preliminary stage without taking evidence.

3. Per contra, Mr. Yadav and Mr. Sabherwal, Counsels representing the respondents submit that no fault can be found with the impugned order. Court below has rightly non-suited the plaintiffs invoking Order II Rule 2 CPC. Reference is being made to Para No.3 and 4 of the plaint wherein the filing of the earlier suit stands admitted. Mr. Yadav thus submits that in view of the admitted position that the plaintiffs earlier filed suit *qua* the same property and did not seek decree of declaration, the Court rightly non-suited the plaintiffs invoking Order II Rule 2 CPC rejecting the plaint on the application submitted by the respondents/defendants.



4. I have heard counsel for the parties and have gone through records of the case.

5. Mr. Yadav and Mr. Sabherwal are not in position to dispute that so far as the plaint of the earlier suit is concerned, the same was not part of present plaint. Trite it is that while adjudicating application under Order VII Rule 11 CPC, the Court is bound not to go beyond the averments made in the plaint. The plaint relied upon by trial court being pleadings in the earlier suit, is yet to be proved on record in the subsequent suit i.e. the present suit. The plaintiff will be well within his right to explain the same. It is only thereafter that the import of those pleadings can be properly appreciated by the Court below. Mr. Sharma is also right in contending that Order II Rule 2 CPC is not pure question of law but a mixed question of fact and law and the same cannot be adjudicated upon without evidence.

6. The import of the Order VII Rule 11 CPC has been well explained by Apex Court in the case of '**Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) through LRs & ors.**', 2020 INSC 450 wherein after considering case law Apex Court observed as under:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.



23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In *Azhar Hussain v. Rajiv Gandhi* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1*, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.



23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1*, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In *Hardesh Ores (P) Ltd. v. Hede& Co.* [*Hardesh Ores (P) Ltd. v. Hede& Co.*, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* [*D Ramachandran v. R.V.*



Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941).

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"

(emphasis supplied)

7. In view of above, this Court finds that the Court below erred in allowing the application filed by the respondents under Order VII Rule 11 CPC in rejecting the plaint which is in teeth of law laid down by Supreme Court in ***Dahiben*** 's case (supra).

8. Resultantly, this Court finds that the instant appeal merits acceptance. Consequently, the same is allowed. The impugned order is



hereby set aside. However, it is made clear that the objections raised by the defendants w.r.t. the subsequent suit being barred by principle of constructive *res judicata* under Order II Rule 2 CPC shall be tried by framing an issue.

- 9. Ordered accordingly.
- 10. Pending application, if any, shall also stand disposed off.

January 14, 2025

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No