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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(118)

CR-6683-2024

Date of decision: - 16.01.2025

Shobhana Dube

....Petitioner

Versus

Saraswati Devi and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pankaj Maini, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 22.07.2024 (Annexure P-9) passed by the Civil Judge (Junior Division), Gurugram in Civil Suit No.858 of 2023 vide which the application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, as per the advance payment receipt (Annexure P-1), an amount of Rs.2,00,000/- was stated to have been paid in cash by Ramjas Yadav/plaintiff No.2 (respondent No.2) and the last date fixed for the balance amount was 31.12.2022 but the said amount was not paid to the petitioner and thus, the respondent No.2 had violated the terms of the said advance payment receipt. It is further submitted that it is the respondent



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No.2, who had prepared the receipt and had shown his presence on 02.01.2023 before the Sub-Registrar, Wazirabad, Gurugram but in the legal notice dated 07.01.2023 (Annexure P-3) it was stated that the sale deed was to be executed in the name of Saraswati Devi who had not been present before the Sub-Registrar and thus, respondent No.2 was wanting the petitioner to execute the sale deed in favour of a third party. It is stated that plaintiff No.2 (respondent No.2) had appeared before the Sub-Registrar twice but plaintiff No.1-Saraswati Devi (respondent No.1) had not ever appeared before the Sub-Registrar and thus, the suit deserves to be dismissed at the threshold and the application filed by the petitioner under Order 7 Rule 11 CPC deserves to be allowed. It is further submitted that the advance payment receipt has been stamped and notarized and it is the case of the respondents/plaintiffs that the same is a routine procedure, whereas, the document/advance payment receipt which is stamped and notarized is not admissible. It is submitted that the impugned order be set aside and the application under Order 7 Rule 11 CPC filed by the petitioner be allowed and the suit of the plaintiffs/respondents be dismissed.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the impugned order dated 22.07.2024 (Annexure P-9) is in accordance with law and deserves to be upheld and the present revision petition, being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. It is not in dispute that respondent Nos.1 and 2 had filed a

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suit for specific performance with consequential relief of permanent injunction on 27.03.2023 (Annexure P-5) on the plea that in the first week of September, 2022, the defendant-present petitioner had approached the plaintiffs representing herself as the owner of a plot measuring 270 sq. yards, bearing No.3215, DLF Phase-IV, situated in and around village Chakkarpur, Tehsil Wazirabad, District Gurugram, Haryana. It was further pleaded that the respondents/plaintiffs had agreed to purchase the suit property for a total sum of Rs.3,48,00,000/- and that on 26.09.2022, an amount of Rs.2,00,000/- was paid to the present petitioner in cash as advance money against the total consideration of the suit property, which was acknowledged by the defendant and an advance payment receipt/agreement dated 26.09.2022 was issued. It was averred that the said receipt was issued by the defendant in the presence of two witnesses, one of whom was a neighbour of the present petitioner, namely, Vinod Kumar and the second witness was the father of the petitioner.

5. It was specifically averred in para 6 of the plaint that it was mutually agreed between the plaintiffs and the defendant that the sale deed was to be executed and registered in the name of plaintiff No.1/Saraswati Devi and also that the remaining payments/sale consideration would be paid from the account of plaintiff No.1 and for the said purpose, the present petitioner had given a self attested copy of her Aadhar Card to the plaintiffs, wherein, it had been mentioned that the copy had been given only for the purpose of registry. It was further agreed that the sale deed would be registered on 31.12.2022 and the

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respondents/plaintiffs while acting upon the agreed terms and conditions of the transfer, had transferred an amount of Rs.20,00,000/- on 05.11.2022 and Rs.13,00,000/- on 09.11.2022 from the Bank account of plaintiff No.1 to the Bank account of the present petitioner bearing No.1855000109054330 of Punjab National Bank. The copy of the account statement was also annexed alongwith the suit. It was further averred that since 31.12.2022 was a Saturday, thus, the plaintiffs had informed the present petitioner on 30.12.2022 through Vinod Kumar, who was a witness to the receipt/agreement, to be present before the office of Sub-Registrar, Wazirabad, Gurugram on 02.01.2023 for execution of the sale deed, being the first working day after 31.12.2022 and thereafter, on 02.01.2023, the respondents/plaintiffs remained present before the office of the Sub-Registrar, Wazirabad, Gurugram with balance sale consideration for the execution and registration of the sale deed but the petitioner never appeared at the office of the Sub-Registrar for execution of the sale deed. It was stated that the respondents were present in the office of Sub-Registrar, Wazirabad, Gurugram, on 02.01.2023 from 9.00 AM to 5.00 PM alongwith the balance sale consideration and when the petitioner did not turn up, then, the respondent No.2 moved an application to the Sub-Registrar Wazirabad for marking his presence and the copy of the said application had also been annexed alongwith the plaint.

5. It was further pleaded that the respondents thereafter sent a legal notice dated 07.01.2023 (Annexure P-3) to the present petitioner and requested her to come to the office of Sub-Registrar on 23.01.2023

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for the purpose of execution and registration of the sale deed and that the respondents remained present in the office of Sub-Registrar, Wazirabad, Gurugram even on 23.01.2023 from 09.00 AM to 5.00 PM alongwith the balance sale consideration but the present petitioner did not turn up and accordingly, plaintiff No.2 moved an application before the Sub-Registrar Wazirabad for marking his presence and the copy of the said application had also been annexed alongwith the plaint.

6. It was further pleaded in the plaint that the respondents were always ready and willing to perform their part of the agreement and it was the present petitioner/defendant who had not abided by the terms and conditions of the agreement and thus, the present suit for specific performance was filed. A Court fee of Rs.3,42,800/- was paid on the plaint.

7. The present petitioner had moved an application under Order 7 Rule 11 CPC for rejection of the plaint. A detailed reply (Annexure P-7) was filed by the respondents/plaintiffs, in which, it was stated that the said application was not maintainable and that after the said advance payment of Rs.2,00,000/-, further sum of Rs.20,00,000/- and Rs.13,00,000/- had been paid to the present petitioner. The trial Court vide the impugned order dated 22.07.2024 (Annexure P-9) dismissed the said application under Order 7 Rule 11 CPC.

8. It is a settled proposition of law that for the purpose of considering an application under Order 7 Rule 11 CPC, it is the averments made in the plaint which are to be taken into consideration and



only in case, on the basis of the reading of the said plaint, the case falls under one of the grounds mentioned under Order 7 Rule 11 CPC that the plaint can be summarily rejected. The provisions of Order 7 Rule 11 CPC are reproduced herein below: -

“11. Rejection of plaint. The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9;”*

9. A perusal of the averments made in the civil suit clearly shows that the same discloses the cause of action and it also cannot be said that the relief claimed is undervalued or that the case is remotely covered under Clauses (c), (e), (f) and even no argument on the said aspect has been addressed. Even in case the arguments raised by learned counsel for the petitioner are taken on their face value, then also, the same would not make the suit barred by any law. Moreover, no provision of law has been referred to show that even in case the arguments raised by learned counsel for the petitioner are taken on their face value, then, the suit is required to be rejected. On the other hand, the documents which

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have been highlighted by the learned counsel for the petitioner would show that the suit for specific performance alongwith the relief of permanent injunction has been instituted for the purpose of enforcement of the right of the plaintiffs.

10. A perusal of the advance payment receipt (Annexure P-1), highlighted by learned counsel for the petitioner, would show that it had been specifically stated in the same that the present petitioner had received an advanced payment of Rs.2,00,000/- for the sale of the plot in question, which was acquired by the petitioner vide sale deed dated 25.07.2012 and the total consideration had been mentioned in the said advance payment receipt to be Rs.3,48,00,000/- and even the last date for payment of the balance amount had been stated to be 31.12.2022 and the said document was stated to have been signed by the present petitioner. The said document thus specifically records the identity of the property to be sold as well as the sale consideration and the last date for the payment.

11. A perusal of the application dated 2.01.2023 (Annexure P-2) which was highlighted by learned counsel for the petitioner, would further show that one of the plaintiffs i.e. plaintiff No.2 (respondent No.2) had moved an application before the Sub-Registrar to mark his presence and in the said application it had been stated that he had got the balance sale consideration for the execution of the registered sale deed, whereas, the present petitioner/defendant had not appeared. Similarly, a legal notice dated 07.01.2023 (Annexure P-3) had also been issued on behalf of both the respondents/plaintiffs and in the said legal notice, it had been



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reiterated that it had been mutually agreed between the parties that the sale deed would be registered in the name of plaintiff No.1, i.e., Saraswati Devi and amounts of Rs.20,00,000/- and Rs.13,00,000/- had been transferred into the Bank account of the present petitioner for the purpose of sale of the said property. The application dated 23.01.2023 (Annexure P-4), which is a document highlighted by learned counsel for the petitioner, also shows that plaintiff No.2/respondent No.2 had moved an application to mark his presence again before the Sub-Registrar after making an averment that he had got the balance sale consideration. In the said circumstances, it cannot even remotely be stated that the suit of the plaintiff does not deserve a trial.

12. The arguments sought to be raised by the learned counsel for the petitioner, more so, on the aspect that only one of the respondent i.e. plaintiff no.2 had appeared before the Sub-Registrar and it is he who had prepared the advance payment receipt and not the respondent No.1 and that in the legal notice it had been stated that the sale deed is to be executed in favour of plaintiff No.1, cannot be made the basis for rejection of the plaint. It would be relevant to note that in addition to the above-referred documents, which *prima facie* support the averments made in the plaint, it had further been pleaded in para no.6 of the plaint that it had been mutually agreed between the parties that the sale deed would be executed in favour of the plaintiff No.1-Saraswati Devi and an amount of Rs.20,00,000/- was paid on 05.11.2022 and an amount of Rs.13,00,000/- on 09.11.2022 from the Bank account of plaintiff No.1 to the Bank

account of the present petitioner. It is not an unknown practice where the parties do agree to execute a sale deed in favour of a third party. At any rate, all the said aspects can only be considered after the evidence is led by both the parties and after due contest and the same cannot even remotely be stated to be grounds for rejection of the plaint.

9. Keeping in view the above-said facts and circumstances, the impugned order dated 22.07.2024 (Annexure P-9) is upheld and the present revision petition, being meritless, deserves to be dismissed and is accordingly dismissed.

January 16, 2025

naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes