Lt. Col. Hargobind Singh (Retd.) Vs Mr. Hargursharan Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 16, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11, 35A
Constitution of India, 1950 â€" Article 227
Registration Act, 1908 â€" Section 17

Citation: AIR 2011 P&H 260 : (2011) 1 CivCC 155 : (2011) 1 RCR(Civil) 645

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Judgement

Mehinder Singh Sullar, J.
The epitome of facts, culminating in the commencement, relevant for disposal of present petition and emanating

from the record, is that, Hargursharan Singh son of late Gurbax Singh, Respondent- Plaintiff, (hereinafter to be referred as ""the Plaintiff) filed the

present suit for a decree of declaration to the effect that he is owner and in possession, to the extent of 50% share, of the house in dispute, with a

consequential relief of permanent injunction restraining Lt. Col. Hargobind Singh (retired) son of late Gurbakhsh Singh, Petitioner-Defendant

(hereinafter to be referred as ""the Defendant"") from alienating the house in question in any manner.

2. The case set up by the Plaintiff, in brief, in so far as relevant to decide the present controversy, was that the parties to the lis are real brothers.

The Defendant joined the army at young age, while Plaintiff was cultivating the land in the village. In the year 1968, the Defendant approached the

Plaintiff and proposed that as he was eligible for allotment of plot from defence quota, therefore, they should jointly purchased the house in

question. Plaintiff believed and trusted his elder brother blindly and gave Rs. 48,000/- in cash out of his income and funds earned from agriculture

produce with the promise that the Defendant would buy the plot in Chandigarh in their joint name to the extent of 50% share each. Subsequently,

the Plaintiff came to know that the Defendant had purchased/got allotted two kanals plot out of money, which was paid by the Plaintiff, in his own

name. On enquiry in this regard, the Defendant assured the Plaintiff to give his share later on on the plea that as per rules, the plot could only be

allotted in the name of the Defendant out of quota for defence personnel and later on it will be entered in their joint names. Therefore, they decided

to put this entire transactions in writing, in order to avoid any dispute in future. Consequently, a family settlement deed dated 10.11.1970 was

executed by the Defendant out of his free will in the presence of witnesses.

3. Levelling a variety of allegations and narrating the sequence of events in detail, concisely, according to the Plaintiff that he is joint owner and in

possession of the house in dispute to the extent of 50% share in pursuance of family settlement deed dated 10.11.1970. He asked the Defendant

to enter his name in the record of the Estate Officer, Chandigarh but in vain. Instead of giving his half share in the property in dispute, the

Defendant intends to alienate the house in dispute without any legal rights. On the basis of aforesaid allegations, the Plaintiff filed the suit for a

decree of declaration and permanent injunction against the Defendant, in the manner indicated here-in-above.

4. The Defendant contested the suit inter alia, pleading certain preliminary objections of maintainability of the suit, locus standi and cause of action

of the Plaintiff etc. On merits, the allotment of the plot/house in question was not disputed. However, the Defendant claimed that he himself had

paid the entire consideration amount. After depositing the amount, possession was delivered to him and conveyance deed was executed in his

favour on 18.05.1971 by the Estate Officer. The Plaintiff never contributed anything and did not pay any amount for the purchase of the house.

The family settlement/agreement deed dated 10.11.1970 was stated to be a forged document. Succinctly, the Defendant claimed that he is the

absolute owner of the house in dispute, the indicated family settlement/agreement deed is a forged document and the Plaintiff did not make any

payment of consideration amount of the house. It will not be out of place to mention here that the Defendant has stoutly denied all other allegations

contained in the plaint and prayed for dismissal of the suit.

5. Having completed all the codal formalities and in the wake of pleadings of the parties, the trial Court framed the relevant issues for proper

adjudication of the case and slated the case for evidence of the Plaintiff. It is not a matter of dispute that Plaintiff has already produced almost his

entire evidence on record in the trial Court except one or two witnesses remained to be crossexamined by the Defendant.

6. Instead of cross examining the witnesses of the Plaintiff, the Defendant filed an application for rejection of the plaint, invoking the provisions of

Order 7 Rule 11 Code of Civil Procedure, on the grounds that (i) the Plaintiff has no cause of action; (ii) he has not produced any

authentic/registered document to substantiate his claim; (iii) since he is not at all in possession of any part of the suit property, so, he was required

to fix the court fees as per the market value of the suit property; and (iv) suit is time barred. That being so, the Defendant prayed for rejection of

the plaint in this regard.

7. The Plaintiff contested the application and filed the reply stoutly denying all the allegations contained in the application of the Defendant and

prayed for its dismissal.

8. On ultimate analysis of the material on record, the trial Court dismissed this application, vide impugned order dated 08.09.2008 (Annexure

P14).

9. The Petitioner-Defendant did not feel satisfied with the impugned order and filed the present revision petition under Article 227 of the

Constitution of India, leaving this Court in lurch to think, as to what extent, the finding should be recorded with regard to the controversy raised in

the present petition, as the same would naturally have the direct bearing on the real issues between the parties, to be determined by the trial Court,

during the course of trial. Be that as it may, but in the interest of justice, the principle of ""safety saves"" has to be kept in focus in this relevant

context, while deciding the instant revision petition. That is how, I am seized of the matter.

10. Assailing the impugned order, learned Counsel for the Petitioner Defendant has contended with some amount of vehemence that since the

family settlement deed dated 10.11.1970, on the basis of which, the Plaintiff is claiming his half share in the house in dispute, is a forged and

unregistered document and is not admissible in evidence, so, the Plaintiff did not have any cause of action. The argument is that the Plaintiff did not

affix the ad-valorem Court fees on the market rate of the house in dispute and as the suit filed by him is hopelessly barred by limitation, therefore,

the trial Court ought to have rejected the plaint under Order 7 Rule 11 Code of Civil Procedure. In this respect, he has placed reliance on the

observations of Hon''ble Apex Court in cases T. Arivandandam Vs. T.V. Satyapal and Another, ; Bakhshish Singh Brar Vs. Gurmej Kaur and

Another, ; the Delhi High Court in case Sh. Sudershan Kumar Seth Vs. Sh. Pawan Kumar Seth and Others, ; the Allahabad High Court in case

Dharampal Gir and Another Vs. Smt. Angoori Devi, and the Uttarakhand High Court in case Mani Ram v. Padam Datta (D) by L Rs. and Anr.

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11. On the contrary, hailing the impugned order, the learned Counsel for the Respondent-Plaintiff urged that all the objections raised by the

Defendant in the application in hand cannot be decided without evidence. The argument further proceeds that since the Plaintiff has sought

declaration that he is joint owner and in possession of the house in dispute and for permanent injunction, so, he has affixed the requisite Court fees

on it and suit cannot be termed as time barred at this stage.

12. Having heard the learned Counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts

over the entire matter, to my mind, there is no merit in the revision petition.

13. As is evident from the record that the Defendant has sought the rejection of the plaint under Order 7 Rule 11(a), (b) and (d) of Code of Civil

Procedure, which inter alia postulates that,

(a) where the plaint does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the Plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by

the Court, fails to do so:

(c) where the suit appears from the statement in the plaint to the barred by any law;

The plaint shall be rejected.

14. At the very outset, possibly no one can dispute with regard to the following observations of the Hon''ble Supreme Court in T. Arivandandam''s

case supra:

If any party filed a suit for the gross abuse of the process of the Court repeatedly and is a flagrant misuse of the mercies of the law and meaningful

reading of the plaint, it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under

Order VII, Rule 11, Code of CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of

a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, Code of CPC An activist Judge is the

answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be

shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this

case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

It is dangerous to be too good.

The trial Court in this case will remind itself of Section 35-A, Code of CPC and take deterrent action if it is satisfied that the litigation was inspired

by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving any

immediate hearing to the parties concerned.

15. Sequelly, in Samar Singh''s case (supra), the Hon''ble Apex Court ruled that the provisions of Rule 11 of Order 7 Code of CPC can be

invoked at any stage of the proceedings and party should not be unnecessarily harassed in a suit. The idea underlying Order 7 Rule 11(a) is that

when no cause of action is disclosed, the Courts will not unnecessarily protract the hearing of a suit. A litigation, which is in the opinion of the Court

is doomed to fall would not further be allowed to be used as a device to harass a litigant. However, these observations are not at all applicable to

the facts of the present case.

16. Above being the position on record, now the core question that arises for determination in this case is whether the plaint is liable to be rejected

under the present set of circumstances as envisaged under Order 7 Rule 11 Code of CPC or not?

17. Having regard to the rival contentions of learned Counsel for the parties, to me, all the questions/issues raised by the Defendant in the

application are pure mixed questions of law and facts and cannot possibly be determined without adducing evidence by the parties in the trial

Court. All the arguments now sought to be raised on behalf of the Defendant are not at all relevant at this stage and the same may be deeply

necessary at the time of final arguments in the suit during the course of trial.

18. However, the main celebrated argument of learned Counsel for Petitioner- Defendant that since the family settlement/agreement deed dated

10.11.1970 is a forged and unregistered document and is not admissible in evidence, so, the suit of the Plaintiff is bound to fail, is neither tenable

nor the observations of Allahabad High Court in case Dharampal Gir and the Uttarakhand High Court in case Mani Ram (supra) are at all

applicable in the present controversy at this stage.

19. In Mani Ram''s case (supra), the property in question was a self acquired property of Jeet Ram Bahuguna and it could not be said that on

27.3.1961 when the document (paper No. 41-A Ext.14) was executed and signed by the parties, the sons had any share in the self acquired

property of their father. The lower appellate Court held that division of 1/3rd share to each of the sons by Jeet Ram Bahuguna, leaving no share for

himself, would amount to relinquishment of his interest in the property and creating fresh ownership rights in favour of sons and such relinquishment

deed requires registration.

20. Likewise, in Dharam Pal Gir''s case (supra) it was observed as under:

A bare perusal of Sub-section (b) of Section 17 of the Registration Act shows that other non-testamentary instruments which purport to create,

declare, assign, limit or extinguish whether in present or in future, any right, title or interest in immovable property of the value of Rs. 100 or more

has got to be registered. A bare perusal of Agreement (Exhibit 2) would clearly shows that the Defendant in the aforesaid document has clearly

stated that she is the absolute owner of the property in dispute and in respect of the aforesaid property she entered into an agreement not to

alienate during her lifetime and that the aforesaid property would go to the heirs of the husband after her death. From the aforesaid agreement it is

thus clear that there was no antecedent title admitted in the aforesaid deed in respect of the Plaintiff. The Defendant categorically stated that she is

the absolute owner. If that be so, the terms of the agreement clearly create an interest in the disputed property in future in favour of the Plaintiff and

would clearly amount to transfer of property in future in favour of the Plaintiff.

21. Possibly, no one can dispute about the aforesaid observations, but the same would not come to the rescue of the Defendant at this stage. In the

instant case, the Plaintiff has claimed the ownership of the house in dispute purchased from his own income in the name of the Defendant from

defence quota from the very beginning. The initial existing rights of ownership were subsequently incorporated in the family settlement/agreement

deed dated 10.11.1970. Meaning thereby, the family settlement did not create any new right of ownership and in fact incorporated already existing

rights of ownership of the Plaintiff in the family settlement in question. Whether such family settlement requires registration, in view of law laid down

by the Hon''ble Supreme Court in cases Kale and Ors. v. Deputy Director of Consolidation and Ors., AIR 1976 Supreme Court 807 and Bhoop

Singh Vs. Ram Singh Major and others, or admissible (or otherwise) in evidence or whether it is forged document, would be the moot points to be

finally decided by the trial Court on the basis of evidence brought on record by the parties in order to substantiate their respective stands. If that be

so, then, it cannot possibly be saith at this stage that the family settlement is a forged or fake document or is inadmissible in evidence for want of

registration, as urged on behalf of the Defendant.

22. Now adverting to the next contention of the learned Counsel for the Defendant that the Plaintiff is not in possession of the house in dispute, so,

he was required to affix ad valorem court fee on its existing market value, but since he did not pay the requisite fees, so, his plaint is required to be

rejected, is not only devoid of merits but misplaced and speculative as well. Again, it is not a matter of dispute that the Plaintiff has filed the simple

suit for a decree of declaration to the effect that he is joint owner to the extent of 50% of the house in dispute since its allotment/purchase.

Assuming for the sake of argument (though not admitted), if the Defendant is in possession as co-owner, then, legally his possession as coowner

would be deemed to be the possession of all the co-sharers. A co-owner has an interest in the whole property and also in every part of it. The

possession of property by one co-owner is in the eye of law, possession of all the joint owners even if one co-owner is in joint possession of the

same. A mere occupation of larger portion or even of entire joint property by one co-owner does not necessarily amount to ouster as possession

of one co-sharer would be deemed to be on behalf of all the co-sharers. Passage of time does not extinguish the right of the owner, who is out of

possession of the joint property except in the event of complete ouster or abandonment. Therefore, the Plaintiff is neither required to pay ad

valorem Court fee on the existing market price of the property in dispute nor his suit can be termed to be time barred at this stage, as urged on

behalf of the Defendant. Therefore, the observations of Delhi High Court in Sudershan Kumar Seth''s case (supra) are not applicable to the facts of

the present case at this stage.

23. Thus, it would be seen that each of the objections/issues raised by the Defendant in the application under Order 7 Rule 11 Code of Civil

Procedure, as discussed hereinabove, can only be decided on the basis of evidence brought on record by the parties and not otherwise. Hence,

the contrary arguments of the learned Counsel for the Petitioner-Defendant ""stricto sensu"" deserve to be and are hereby repelled under the present

set of circumstances.

24. Meaning thereby, the plaint can only be rejected if it squarely falls within the ambit and four corners of Order 7 Rule 11 Code of CPC and not

otherwise. An identical question arose before this Court in case Rajesh Graver v. Smt. Rita Khurana and Ors. 2005(4) RCR (Civil) 721: 2006 2

PLR 244. After examining the relevant provisions of Order 7 Rule 11 Code of Civil Procedure, it was held as under: -

The Court should be circumspect in rejecting a plaint at the threshold as it entails very serious civil consequences. The Court should exercise this

power only in those cases where it comes to the clear conclusion that any of the conditions enumerated in Clauses (a) to (f) are satisfied and it

should be so done in exceptional-circumstances. The truthfulness of narration of facts in the plaint or the written statement are not to be judged at

the stage of rejection of plaint. That is a matter of evidence which the Court shall go into at the trial of the case. The weakness or the strength of the

case of the parties is not to be judged at that stage. A distinction is to be drawn between rejection of a plaint and dismissal of a suit.

These observations ""mutatis mutandis"" are applicable and are the complete answer to the problem in hand.

25. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

26. In the light of the aforementioned reasons and without commenting further anything on merits, lest it may prejudice the case of either side during

the trial, the instant revision petition is hereby dismissed, in the obtaining circumstances of the case. However, it is made clear that nothing recorded

herein above would reflect on the merits of the case, in any manner, as the same has been so observed for a limited purpose of deciding the instant

petition.