(2014) 07 P&H CK 0838

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 191 of 2014 (O&M)

Raj Kumar	APPELLANT
Vs	
Anil Mahajan	RESPONDENT

Date of Decision: July 30, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Arshdeep Bhullar, Advocate for the Appellant; Aman Kashyap, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Kumar Jain, J.

CM No. 13966-CII-2014

1. Application is allowed.

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2. This revision petition is directed against the order dated 8.10.2013 by which an application filed by the defendants under Order 7 Rule 11 of the CPC has been allowed and the plaintiffs have been given time to make good the deficiency in the Court fee in a stipulated period.

3. The averments made in the plaint are that late Ram Dass and Hira Lal were father and son, who started their business in the name and style of M/s. Ram Dass Hira Lal, SCO No. 208, Sector 36-D, Chandigarh and were running two firms namely, of M/s. Ram Dass

Hira Lal, SCO No. 208, Sector 36-D, Chandigarh and of M/s. Ram Dass Hira Lal, SCO No. 3027, Sector 22D, Chandigarh. Ram Dass died in 1989 and Hira Lal died in 22.4.1990. The partnership deed was executed on 13.6.1990 in which there were three partners namely, Ramesh Chander, Raj Kumar and Chand Rani. The positive case of the plaintiffs, who happens to be the wife and sons of Hira Lal is that SCO No. 328, Sector 36-D, Chandigarh was allotted in the name of the firm M/s. Ram Dass Hira Lal. It is alleged that the said SCO was let out and is in possession of the tenants. The plaintiffs requested defendants No. 1 and 2 to give complete accounts including that all the balance-sheet of SCO in question but they always avoided. It is also averred that the said SCO is a joint property of the parties as it has been allotted in the name of the firm and the plaintiffs are the natural successors of Ram Dass and Hira Lal. On this premise, the plaintiffs prayed for decree for partition, possession, rendition of account with consequential relief of permanent injunction restraining the defendants from receiving rent from the tenants. In the written statement filed by defendant No. 2, it is averred that the property in dispute was allotted in the name of the firm having three partners, namely, Ramesh Chander, Raj Kumar and Chand Rani. At the stage of plaintiffs'' evidence, the defendants filed application under Order 7 Rule 11 of the CPC for rejection of plaint on the ground that as per the prayer made in the suit they are required to affix ad valorem Court fee. The application was hotly contested by the plaintiffs and has ultimately been decided by the impugned order.

4. The petitioner challenged that order before this Court by way of present revision petition in which operation of the impugned order has been stayed but the proceedings before the trial Court were allowed to continue. Accordingly, it has reached the final stage of arguments.

5. Learned counsel for the petitioner has argued that the property in dispute is allotted to the firm as admitted by the defendant in para No. 3 of reply on merits of the written statement and after the death of Hira Lal, the plaintiffs have stepped into his shoes and are entitled to take his share for which they have filed suit for partition, possession and rendition of accounts. It is also submitted that since the property has not been partitioned, therefore, they are in joint possession and has relied upon decision of this Court in the case of Delhi-Assam Roadways Corpn. Ltd. Vs. Sita Ram Aggarwal and Others,

6. On the other hand, learned counsel for the respondents has argued that the plaintiffs have failed to produce any evidence on record that the property in dispute is allotted in the name of the firm rather the evidence brought from the Estate Office, prima facie proves that the property in dispute has been allotted in the name of three individuals namely, Ram Dass, Hira Lal and Ramesh Chander and not in the name of firm. It is submitted that the suit of the plaintiffs thus, is not maintainable as their entire case is based upon the fact that the property is in the name of the firm of which his father was one of the partners and after his death they have also stepped into his shoes and are entitled to the share held by him. It is further argued that had it been a case of the plaintiffs claiming the property in dispute of their predecessor-in-interest owning in his

individual capacity then the matter would have been altogether different as they could have argued for decree of joint possession and in that situation they were not liable to pay ad valorem Court fee but since the suit filed by the plaintiffs is entirely based upon the fact that the property in dispute is owned by the firm in which their predecessor-in-interest was the partner, the plea of joint possession cannot be taken. In this regard, he has relied upon a decision of Delhi High Court passed in IA No. 10367 of 2010 titled as "Sushma Tehlan Dalal Vs. Shivraj Singh Tehlan and others" on 4.3.2011.

7. I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that there is no error in the order passed by the Court below.

8. The suit of the plaintiffs is basically on the premise that the property in dispute has been allotted to the firm M/s. Ram Dass Hira Lal whereas the learned counsel for the plaintiffs has failed to produce any evidence much less prima facie in this regard rather the evidence produced by learned counsel for the respondents shows that it has been allotted in the name of three individuals. Even if the defendants have admitted in the written statement that it has been allotted to the firm but the said admission cannot be taken into consideration contrary to the documentary evidence produced on record. Thus, the judgment in the case of M/s. Delhi-Assam Roadways Corpn. Ltd. (Supra) is of no help to the petitioner rather the decision in the case of Sushma Tehlan Dalal (Supra) supports the case of the respondents in which the proposition of law has been laid that "in order to ascertain whether the suit has been property valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the defendants".

9. In this view of the matter, once the plaintiffs are not in joint possession of the property of the firm and are seeking possession thereof, they are liable to pay court fee as determined by the trial Court in view of the judgment of the Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others,

10. Accordingly, I do not find any error in the impugned order and thus, the revision petition is hereby dismissed. The petitioner, if so advised, may affix the ad valorem Court fee within one month from today.