

(2014) 03 P&H CK 0249

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision Nos. 6005 of 2013 and 1424 of 2014 (O and M)

Manju

APPELLANT

Vs

Kailashwati

RESPONDENT

Date of Decision: March 14, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 7 Rule 11, 151
- Constitution of India, 1950 - Article 227

Citation: (2014) 175 PLR 462**Hon'ble Judges:** Mehinder Singh Sullar, J**Bench:** Single Bench

Advocate: Akshay Jindal, Ashwani Mata, Senior Advocate and Rohit Khanna, Advocate for the Appellant; Ashwani Mata, Senior Advocate, Rohit Khanna and Akshay Jindal, Advocate for the Respondent

Judgement

Mehinder Singh Sullar, J.

As identical questions of law and facts are involved, therefore, I propose to decide CR No. 6005 of 2013 titled as "Manju v. Smt. Kailashwati & Ors." (for brevity "the 1st case") and CR No. 1424 of 2014 titled as "Kailashwati v. Manju & Ors." (for short "the 2nd case"), arising out of the same impugned order between the same parties, by virtue of this common decision, in order to avoid the repetition. The matrix of the facts and material, culminating in the commencement, relevant for deciding the instant revision petitions and emanating from the record, is that, initially, plaintiffs Manju widow of, Halley son of and Heena daughter, of Rajiv son of Tilak Raj (for brevity "the plaintiffs"), have instituted the civil suit (Annexure P1 in 1st case) and (Annexure P2 in 2nd case), for a decree of declaration to the effect that the Will dated 31.1.1999 and civil Court decree dated 14.11.2011 passed in civil suit No. 353 of 2011 titled as "Kailashwati Soin v. Rajiv Kumar and others, are illegal, null, void and not operative on their rights, with a consequential relief of permanent injunction, restraining defendant Kailashwati Soin widow of Tilak Raj (in short "the

defendant"), from dispossessing them and alienating the suit property in any manner. The defendant contested the claim of plaintiffs, filed the written statement, stoutly denied all the allegations contained in the plaint and prayed for dismissal of the suit.

2. During the pendency of the suit, the defendant has moved an application (Annexure P2 in 1st case) and (Annexure P4 in 2nd case) for rejection of plaint under Order 7 Rule 11 read with Section 151 CPC. The plaintiffs refuted her prayer, filed the reply, strongly denied all the allegations contained in the application and prayed for its dismissal.

3. Sequel, the trial Court partly decided the pointed application of the defendant and directed the plaintiffs to affix ad valorem Court fee on the market value of the property in dispute and just ignored the other objections, by means of impugned order dated 20.9.2013 (Annexure P4 in 1st case) and (Annexure P1 in 2nd case).

4. Aggrieved thereby, plaintiff No. 1 and defendant have preferred their respective revision petitions, invoking the superintendence jurisdiction of this Court under Article 227 of the Constitution of India.

5. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant petitions deserve to be accepted in this context.

6. As is evident from the record that the plaintiffs have filed the civil suit for a decree of declaration and permanent injunction against the defendant in the manner depicted here-in-above. The defendant moved an application under Order 7 Rule 11 read with Section 151 CPC on the grounds that (i) the suit is not maintainable under Order 2 Rule 2 CPC; (ii) bad for non-joinder of necessary parties and (iii) objection of Court fee etc. The rejection of plaint has also been sought on the ground of family settlement between the parties. The trial Court has only decided the matter relating to Court fee and directed the plaintiffs to affix the ad valorem Court fee on the plaint, whereas it has just ignored the other pointed legal objection of maintainability of the suit etc. with impunity. Once, the defendant has raised the indicated questions with regard to the maintainability of the suit, then, it was the duty of the trial Court to decide all other legal objections either this way or that way, contained in the pointed application filed by the defendant, instead of just ignoring them with impunity.

7. Faced with the situation, learned counsel for the parties are ad idem that in this view of the matter, the impugned order cannot legally be sustained in the obtaining circumstances of the case. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of main suit, the instant revision petitions are accepted. The impugned orders dated 20.9.2013 (in both the revision petitions) are hereby set aside. The matter is remitted back and the trial Court is directed to consider the

aforesaid objections and decide the indicated application afresh and in accordance with law.