

(2014) 08 P&H CK 0309

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1007 of 2013 (O&M)

Ram Singh

APPELLANT

Vs

Gaushala Patiala

RESPONDENT

Date of Decision: Aug. 13, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3, Order 23 Rule 3A, Order 7 Rule 11
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Inderjit Singh, J

Bench: Single Bench

Advocate: Vijay Sharma, Advocate for the Appellant; Karan Gupta, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Inderjit Singh, J.

Ram Singh-petitioner/defendant No. 1 has filed this civil revision petition against Gaushala Patiala-respondent/plaintiff and Darshan Singh etc. respondents/defendants No. 2 to 4 under Article 227 of the Constitution of India for quashing the impugned order dated 4.8.2012 (Annexure-P.6) passed by the learned Civil Judge (Junior Division), Patiala, vide which the application filed by the petitioner under Order 7 Rule 11 C.P.C. has been dismissed.

2. It is mainly stated in the petition that the petitioner filed suit No. 156-T/106 of 23.5.2005 for possession by way of redemption of land comprised in Khewat/Khatoni No. 9/136 bearing Khasra No. 224 (2-19), 225 (6-13) measuring 9 Bigha 12 Biswa situated at Village Sullar Tehsil and District Patiala. In the above suit Mahant Sanjiv Dass Hari Chela Shiv Narain Dass, President/Manager, Gaushala Patiala appeared in witness box and his statement was recorded. The above suit of the petitioner was decreed by the learned Additional Civil Judge (Senior Division), Patiala, vide judgment and decree dated 2.6.2007 and decree for possession by way

of redemption of mortgaged suit property was passed in favour of the petitioner and suit land stands redeemed. After 3^{1/2} years respondent No. 1/Gaushala Patiala filed the present suit No. 477-T/9.12.10/21.5.12 for declaration to the effect that the plaintiff society became owner in possession of the land by efflux of time and for declaration that civil Court decree dated 2.6.2007 is illegal, null and void and for permanent injunction restraining defendant No. 1/petitioner from interfering in possession of the plaintiff/respondent No. 1 herein.

3. In this case, notice of motion was issued. Learned counsel put in appearance on behalf of respondent No. 1 and contested the revision petition.

4. I have heard learned counsel for the parties and have gone through the record.

5. From the record, I find that application under Order 7 Rule 11 C.P.C. for rejection of plaint was filed by defendant No. 1/petitioner by stating that the suit land stands redeemed on payment of mortgaged amount vide judgment and decree dated 2.6.2007. However, the judgment and decree dated 2.6.2007 was ordered to be amended by the Court vide order dated 31.3.2010. It is further stated that in a case of usufructuary mortgage, there is no limitation prescribed for getting the land redeemed. Learned Civil Judge (Junior Division), Patiala vide order dated 4.8.2012 held that the plaintiff has filed the suit for declaration that he has become owner in possession of the land measuring 9 Bigha 12 Biswa by efflux of time. Although, it is claimed by counsel for defendant No. 1 that there is no limitation for the redemption of usufructuary mortgage, the averments made in the application cannot be decided at this stage upon an application filed under Order 7 Rule 11 C.P.C. It was stated that the case is already fixed for the evidence of the plaintiff and the claims of the parties can be adjudicated effectively and properly only after the trial upon the appreciation of the evidence.

6. From the perusal of the record, I find that the order dated 4.8.2012 passed by the learned Civil Judge (Junior Division) is correct and as per law. In no way, it can be held that the judgment and decree dated 2.6.2007 and order dated 31.3.2010 have attained finality and cannot be challenged. Since the plaintiff has specifically challenged the judgment and decree, therefore, this fact can only be decided on the basis of evidence on merits of the case. The claim on this ground cannot be rejected under Order 7 Rule 11 C.P.C. Otherwise also, Gaushala Patiala-plaintiff has filed the suit for declaration that the plaintiff society being mortgagee became owner in possession of the land measuring 9 Bigha 12 Biswa by efflux of time and for declaration to the effect that the civil Court decree allegedly passed between defendant No. 1 by defendants No. 2 to 4 in collusion with alleged President, Mahant Sanjiv Dass Hari claiming himself to be President/Manager of the Gaushala Patiala of the plaintiff society is illegal, null and void. All these facts are to be determined on merits on the basis of evidence.

7. Learned counsel for the revision petitioner placed reliance on the judgment of this Court in [Devi Sarup and Others Vs. Smt. Veena Nirwani and Others](#), I have gone through this judgment. This fact will be considered at the time of final arguments, whether the Court can decide the present suit or an application for setting aside the compromise will be maintainable in that Court. As argued the main case of the respondent No. 1/plaintiff is that the earlier decree was got passed by making statement by unauthorized person and in collusion and no resolution etc. was passed by the society. All these facts are to be considered on the basis of evidence.

8. Learned counsel for the petitioner on the same point further placed reliance on the judgment of Hon"ble Supreme Court in Pushpa Devi Bhagat (D) through [Pushpa Devi Bhagat \(D\) th. L.R. Smt. Sadhna Rai Vs. Rajinder Singh and Others](#),

9. On the other hand, learned counsel for respondent No. 1/plaintiff placed reliance on the judgment of the Hon"ble Supreme Court in [Bhau Ram Vs. Janak Singh and Others](#), in which it is held that while considering application filed under Order 7 Rule 11 C.P.C., the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statement would be irrelevant. Learned counsel for respondent No. 1/plaintiff also placed reliance on the judgment of Himachal Pradesh High Court in Bhandaru Ram (deceased) through his [Bhandaru Ram \(deceased\) through his L.R. Rattan Lal Vs. Sukh Ram and Others](#), The law laid down in this judgment is regarding whether the limitation period can be prescribed for the usufructuary mortgage. This fact is to be decided on merit by the Court.

10. Further more, the case of the plaintiff-Gaushala Patiala is that the plaintiff had never been served in that case nor, it being a registered Society, passed any resolution to authorize Mahant Sanjiv Dass Hari to make a statement on behalf of the plaintiff. The argument of the learned counsel for the plaintiff/respondent No. 1 herein that when the plaintiff was not a party in that suit that judgment is not binding upon it and no compromise has been effected by the plaintiff. If any statement is made by Mahant Sanjiv Dass Hari claiming himself the President, in no way, it can be treated as a statement made on behalf of the plaintiff. The plaintiff has not engaged any Advocate in that suit. All these facts are to be determined on the basis of evidence and in view of these peculiar facts the provisions of Order 23 Rules 3 and 3A C.P.C. will not apply in the present case.

11. Therefore, at this stage, the application filed under Order 7 Rule 11 C.P.C. cannot be allowed. Further for rejecting the plaint, the Court is to see the averments made in the plaint and neither the pleas or objection taken by the defendants in its written statement nor the documents of the defendants are to be seen at the time of deciding application filed under Order 7 Rule 11 C.P.C.

12. Therefore, the impugned order passed by the learned Civil Judge (Junior Division), Patiala is correct and as per law, which does not require any interference from this Court and the same is upheld.

13. Therefore, finding no merit in the civil revision petition, the same is dismissed.