

2025:PHHC:014428



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6148-2022 (O&M)

Date of Decision: January 30, 2025

Mohinder Singh

...Petitioner

Versus

Gaganpreet Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.S.Dhaliwal, Advocate
for the petitioner.

Respondent No.1 proceeded against ex-parte.

Service of respondent No.2 dispensed with.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 09.11.2022 passed by learned trial Court, whereby, an application under Order 7 Rule 11 CPC, filed by the petitioner (defendant before learned trial Court), for seeking rejection of the plaint, was dismissed.

The facts germane, to be noticed, are as herein given:-

That, initially, Gaganpreet Singh-respondent No.1 (plaintiff before learned trial Court) had filed a suit against the petitioner-defendant No.1 and Shashi Singla-defendant No.2, for seeking possession by way of ejectment of the defendants from the premises, as detailed in the plaint, copy whereof

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is Annexure P-1 and he had also sought recovery of mesne profits/damages.

In the plaint, it is averred by respondent No.1-plaintiff that he is son of Dr.Ikattar Singh and Smt.Pritam Kaur. Smt.Pritam Kaur is daughter of Smt.Ajaib Kaur and Ajmer Singh. Being legal heir of Pritam Kaur, the plaintiff is entitled to file the present suit. Also further, in paragraph No.2 of the plaint, it is asserted that the Chandigarh Administration had allotted SCF No.97, Sector-35C, Chandigarh i.e. the suit property, to Mrs.Jagdish Kuar, s/o Ajmer Singh and Kanwaljit Singh Thandi, vide allotment letter No.3459/CPL/2542 dated 25.04.1974. However, Kanwaljit Singh Thandi, through a relinquishment deed dated 17.12.1977 had relinquished his share in the above said property, in favour of Jagdish Kaur. Jagdish Kaur had let out the said property to M/s U.P. Handloom Corporation. However, before her death on 03.02.1992, the property was vacated and possession was handed over to Pritam Kaur and the premises remained under lock and key, till the death of Jagdish Kaur. After the death of Jagdish Kaur, the premises remained in possession of Pritam Kaur, till the forcible possession taken by the defendants, in connivance with the local police.

Furthermore, in the plaint, there is mention made about separate litigation, initiated at the instance of the defendants, thereby, asserting their right on the property, on the basis of the agreement to sell of the suit property, which they lost, upto Hon'ble Supreme Court. On the basis thereof, it is asserted that the possession of the defendants is illegal and unlawful. Further, it is also asserted in the plaint that Jagdish Kaur died on 03.02.1992, who succeeded by her mother Ajaib Kaur, on the basis of Will

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dated 03.11.1991. Ajaib Kaur also died and executed Will dated 13.10.1993, in favour of Pritam Kaur. Pritam Kaur also executed Will in favour of her husband Dr.Ikattar Singh and late Dr.Ikattar Singh, executed Will dated 01.01.2016, in favour of the plaintiff. By virtue of the Will, the plaintiff is owner/co-sharer of the property in question and being co-sharer, he is entitled to claim the mesne profits from the defendants.

In the plaint, there is also mention made of some criminal case between the parties, which had culminated into acquittal. Furthermore, it is asserted about Dr.Ikattar Singh having applied for the transfer of the said property in his favour before the Estate Office, U.T. Chandigarh, but the Estate Office did not transfer the said property till date and civil suit titled 'Dr.Ikattar Singh vs. U.T. Chandigarh and others', regarding the same, is pending in the Court.

In pursuance of the notice issued, the defendants made appearance and filed an application under Order 7 Rule 11 CPC, thereby, seeking rejection of the plaint, copy whereof is Annexure P-2. Therein, it is asserted that even though, the plaintiff is asserting his right over the suit property, on the basis of various Wills, but however, the Wills so relied upon by him, were never recognised by the Court as well as the officials of the Estate Officer, till date and therefore, the plaintiff has no right to seek possession of the suit property, unless and until, he proves himself to be owner/co-sharer of the suit property.

In the same, reference is also made to other litigation, which also culminated into filing of RSA-4435-2013 and it is stated that that the same



was dismissed, but however, it was observed by this Court, as herein given:-

“In this case, the findings of facts have been recorded by two Courts below. From the perusal of the entire lower Court file as well as the findings of both the Courts below, I am of the view that no question of law much less the substantial question of law arises. The findings of facts have been recorded by both the Courts below. After going through the file, I am of the view that there is no illegality or perversity in the same. It being so, I do not find any ground to interfere in the findings of facts recorded by both the Courts below, including the finding recorded regarding Will in favour of Ajaib Kaur by the first appellate Court. As such, there is no need to elaborately discuss the evidence of the parties. Consequently, the present regular second appeal fails and the same is dismissed. However, it is made clear that the LRs of deceased Jagdish Kaur were brought on record only to represent her in this case and this judgment shall not be taken to be a final verdict as to who is to inherit the property of Jagdish Kaur.”

On the basis of the aforesaid observations, it was held that final verdict, with regard to the question of inheritance of the suit property, was not given, as it was the suit for specific performance. Further also, it is stated that Estate Office has not believed the Wills, so relied upon by the plaintiff. On the basis thereof, it is asserted that no cause of action accrues in favour of the plaintiff, to file the case against the defendants, when his father was also not recognised as owner/co-sharer of the suit property by the Court of law.

After seeking reply of the same, vide impugned order, the

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aforesaid application under Order 7 Rule 11 CPC was dismissed by learned trial Court, wherein, it was held that it is a matter of evidence, as to whether, the plaintiff, being owner of the suit property, is entitled to seek possession as well as mesne profits from the defendants or not and the onus to prove the same, shall also lies upon the plaintiff.

Furthermore, it was also observed that it will not be in the interest of justice to straightway reject the claim of the plaintiff, mainly on this ground. Hence, the application was dismissed.

In order to consider application under Order 7 Rule 11 CPC, the Court has to look into the averments made in the plaint and the same can be exercised by the trial Court, at any stage of the suit. At this stage, the submissions made, without filing of the written statement, are wholly irrelevant and it is to be decided, only on the plaint averments. These principles have been reiterated by the Courts, time and again.

In the present case, the meaningful reading of the plaint, makes it abundantly clear that the plaintiff is coming forth and asserting his right over the suit property, on the basis of multiple Wills, executed by his father, mother and tracing back to his other relations. In the light of the same, it is evident that plaintiff is asserting his civil right, on the basis of the Wills. That being so, no sustenance, as such, can be drawn, solely on the account of order of the Estate Office. It has to be adjudicated by the Courts.

Even though, in the application under Order 7 Rule 11 CPC, reference has been made to the observations made in the RSA, but however, from the contents of the aforesaid observation, it is evident that it was the

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suit for specific performance. It was not the contest on the basis of the inheritance of the parties to the lis. In fact, precisely on this account, in the last three lines, it has been specifically mentioned that *'However, it is made clear that the LRs of deceased Jagdish Kaur were brought on record only to represent her in this case and this judgment shall not be taken to be a final verdict as to who is to inherit the property of Jagdish Kaur.'*

Such being the observations, no sustenance can be drawn from the RSA, to assert about no cause of action to be there for the plaintiff to file the suit. The title, so asserted and so denied, at the maximum, is questionable, which can be adjudicated, only after the evidence is brought on record. The question with regard to the nature of the relationship of the plaintiff with the owners, which he traces back, can only be ascertained, when the evidence is brought on record and opportunity is given to the parties to lead evidence, relating to the same.

Considering the same, learned trial Court has rightly dismissed the application for rejection of the plaint under Order 7 Rule 11 CPC. Consequently, the impugned order brooks no interference by way of exercise of revisional jurisdiction. Hence, the present revision petition stands dismissed.

January 30, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No