

(2018) 11 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil First Appeal No. 457 Of 2018

Surjan Singh S/o Shri Gurditt Singh @APPELLANT@Hash Manchand S/o Shri Preetu and ors

Date of Decision : 26-11-2018

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 42B
Code of Civil Procedure, 1908 — Order 7 Rule 11(d), Order 7 Rule 11

Citation : (2018) 11 RAJ CK 0040

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : S.L. Jain, Trilok Joshi

Final Decision : Allowed

Judgement

Appellant-plaintiff has preferred this first appeal to challenge order dated 24.08.2018, passed Additional District Judge, Anupgarh, District

Sriganganagar (for short, the learned trial Court), whereby learned trial Court, while accepting application of respondent-defendants under Order

7 Rule 11 CPC, rejected the plaint.

The facts, in brief, giving rise to this first appeal are that appellant-plaintiff filed a suit for specific performance of contract against respondents, inter-

alia, on the ground that on their behalf an agreement to sale was executed on 11.06.1991 pertaining to suit land but despite his readiness and

willingness, they failed to perform their part of the contract. Resisting the suit on behalf of respondent-defendants, an application under Order 7 Rule

11 CPC was filed precisely on the ground that the suit is barred by law by virtue of Section 42B of the Rajasthan Tenancy Act, 1955. As per version

of the respondent-defendants, they belong to Scheduled Caste being Chamar, and therefore, sale of agricultural land in favour of a person of upper

caste, to which appellant belongs, is forbidden in law. The learned trial Court, after hearing arguments of rival parties, while relying on the averments

made in application under Order 7 Rule 11 CPC and the documents produced, found the suit barred by law and consequently rejected the plaint.

I have heard learned counsel for the appellant, learned counsel for the respondents, perused the impugned order and also scanned the entire record of the case.

There remains no quarrel that Order 7 Rule 11 CPC envisages provision for rejection of plaint under certain contingencies, more particularly, when

from the averments made in the plaint it is clearly apparent that it does not disclose cause of action, or where the suit appears from the statements in

the plaint to be barred by any law. As in the instant case, the precise objection raised on behalf of respondent-defendants

fell within the ambit of Clause (d) of Rule 11 of Order 7 CPC, it was expected of learned trial Court to examine the statements in the plaint. However,

the learned trial Court, while granting indulgence to the respondent-defendants, has placed heavy reliance on the averments made in the application

under Order 7 Rule 11 CPC and has further relied upon the document produced on their behalf.

Supreme Court in case of P.V. Guru Raj Reddy & Anr. Vs. P. Neeradha Reddy & Ors. [(2015) 8 SCC 331], while considering power under Order 7

Rule 11 CPC, has found that such power is drastic one, and therefore, has to be exercised solely by relying on the statements of facts in the plaint and

Court is not expected to take into account the averments made in the application under Order 7 Rule 11 CPC, or the written statement filed on behalf

of defendants. The Court has made following observations:

5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The

conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It

is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any

law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of

the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do

not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.â??

In this view of the matter, learned trial Court has committed grave and serious error of law and fact in accepting the application under Order 7 Rule

11 CPC and consequently rejecting the plaint. The course adopted by the learned trial Court is per se contrary to the mandate of Clause (d) of Rule 11 of Order 7 CPC.

Reultantly, the impugned order passed by learned trial Court is set aside and the matter is remanded back with a direction to the learned trial Court to

call upon the defendants to file written statement, and thereafter, to frame issues including issue relating to bar of the suit filed by appellant-plaintiff.

The trial Court is further expected to decide the issue relating to bar of the suit as preliminary issue.

The appeal is, accordingly, allowed subject to the observations made supra.